Response to the Hoffman Independent Review

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Disclaimer: The views expressed here are solely those of the authors as representatives of the American Psychological Association (APA) Division 19 and do not in any way represent the views of any branch of the U.S. Armed Forces, the Department of Defense (DoD), or any other entity of the U.S. Government. The military rank for task force members with service in the Armed Forces at present or in the past has been removed to eliminate any misunderstanding or misperception regarding our roles in this response, which are solely as members of APA and Division 19.

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Executive Summary

The president of the American Psychological Association (APA) Division 19, the Society for Military Psychology, with the approval of the division executive committee (EXCOM), created a task force (TF19) following the release of the Hoffman Independent Review (hereinafter referred to as the Hoffman Report) by APA in July 2015. As identified in the terms of reference (Appendix A), the charge given to TF19 by the division president was to examine the Hoffman Report from a perspective informed by the scientific method. The division president requested that TF19 make a number of determinations including whether the report brought forth evidence that the division or any division member acted in support of torture, whether the report's discussions and conclusions were based on a correct understanding of the relevant facts and an adequate understanding of military culture, and whether an apology from the division regarding any of the events recounted in the report is warranted. The division president also charged TF19 with providing specific recommendations to assist the division in moving forward.

Torture is antithetical to the core values of military members, military officers, and military psychologists. TF19 found that Division 19 has never wavered from this position. TF19 found no evidence in the Hoffman Report that Division 19 or any Division 19 member supported torture or engaged in unethical behaviors with respect to interrogation support.

With respect to the specific findings identified by the Hoffman Report, the review completed by TF19 included the following:

- The Hoffman Report's conclusions are based upon 1) an inaccurate understanding of DoD interrogation policies in place when the PENS Task Force met in June 2005, 2) an inadequate understanding of how military interrogations are conducted, 3) a misconception of military culture, and 4) a deep bias against military psychology and military psychologists. While acknowledging that U.S. personnel were involved in torture and abusive treatment of detainees following the events of 11 September 2001, TF19 did not find a basis for an apology by Division 19 for actions of the division or for the actions of division members with regard to interrogation support.
- There was no evidence of collusion, as defined by the Hoffman Report, to ensure that abusive interrogation techniques could continue under guidelines provided by the Presidential Task Force on Ethics and National Security (PENS) Report. By the time that

the PENS Report was adopted as APA policy in July 2005, the Department of Defense (DoD) had enacted strict policies, tight guidelines, and close oversight for military interrogation activities in response to abuses that had occurred in 2002-2004. DoD guidelines, as they existed at the time the PENS report became APA policy, directly contradict the factual foundation of the Hoffman Report's main conclusion. TF19 therefore found that the Hoffman Report's main conclusion is incorrect.

- TF19 found no evidence in the Hoffman Report of any *quid pro quo* between Division 19 and the APA or DoD with regard to any of the issues raised in this investigation, to include the PENS Report. TF19 found that the Hoffman Report itself acknowledged that there was no specific or concrete benefit provided by DoD to APA in exchange for any action or policy related to interrogations. TF19 could find no evidence in the Hoffman Report of an inference, a hint, or a promise of any benefit from DoD in exchange for any APA action or policy related to interrogations.
- Division 19 has been consistent in its insistence that regard for human welfare and human rights is a core component of the ethical practice of psychology, regardless of the setting or location of that practice. TF19 did not find any evidence in the Hoffman Report to indicate that any military psychologist engaged in unethical interrogation-related activity following APA's adoption of the PENS Report in July 2005, or any military psychologist lacked appropriate and sufficient interrogation-related guidance following adoption of the PENS report as APA policy.

TF19 views it as essential that APA establish a corrective process to ensure that the Hoffman Report is based solely upon accurate information regarding DoD policies related to interrogation, conveys an adequate understanding of how military interrogations are conducted, is informed regarding military culture, and is free from bias against military psychology and military psychologists. While TF19 acknowledges that the revised Hoffman Report, dated 4 September 2015, did correct some errors, much work remains to be done to reach the standard expected of a scientific organization.

Division 19 Presidential Task Force Report

Introduction

The infliction of torture evokes a strong, visceral response for us all, as it must. To engage in; direct; support; facilitate; offer training; or fail to prevent torture or other cruel, inhuman, or degrading treatment is deeply inconsistent with the ethics and values inherent to military service and the entire profession of psychology. Senator John McCain, himself a victim of torture as a prisoner of war in Vietnam, stated:

> I have often said, and will always maintain, that this question isn't about our enemies; it's about us. It's about who we were, who we are and who we aspire to be. It's about how we represent ourselves to the world. When we fight to defend our security we fight also for an idea . . . that all men are endowed by the Creator with inalienable rights. Our enemies act without conscience. We must not.[1]

The debate about the role of psychologists in national security interrogations has been highly charged, bringing to the fore deeply held beliefs about the practice of psychology, human rights, and ethical responsibilities. In addition, the events leading to, and the responses stemming from, the Hoffman Report have highlighted the tension that has always existed regarding the very identity of psychology as a profession – whether it is a field based solely in research, education, and provision of services related to clinical care, or a field that also allows for consultation in which the "client" is an agency or organization.

On 12 November 2014, the Board passed a resolution calling for "a definitive, independent and objective review" of allegations that APA had colluded with the U.S. Government to support torture during the war on terror.[2] While this action was triggered by the release of James Risen's book,[3] "critics"[4] within APA have long argued against the role of psychologists in support of interrogations. The law firm Sidley Austin was selected to conduct this review, a process which resulted in "The Report to

[1] Statement given to the U.S. Senate in support of the public release of the Senate Intelligence Committee Report on Torture, 10 December 2014, Retrieved from http://www.cnn.com/2014/12/09/politics/mccain-lauds-release-terror-report/index.html. APA supported anti-torture legislation authored or co-authored by Senator McCain, twice, first in 2005 and subsequently in 2015.

[2] Retrieved from http://www.apa.org/about/governance/board/independent-review.aspx

[3] Risen, J., *Pay Any Price: Greed Power and Endless War*, Houghton Mifflin Harcourt, NY, 2014.

[4] A term used in the Hoffman Report to describe the group who has long opposed the role of psychologists in support of interrogations.

the Special Committee of the Board of Directors of the American Psychological Association: Independent Review Relating to APA Ethics Guidelines, National Security Investigations and Torture."[5]

The allegations of the Hoffman Report are deeply troubling and must be subjected to a fair, neutral analysis informed by the scientific method. The core values that anchor APA include the pursuit of excellence, knowledge "based upon methods of science" (emphasis added), service, social justice and ethical action." In defining itself, APA identifies a strategic plan "to excel as a valuable, effective and influential organization advancing psychology as a science" (emphasis added).[6] As such a profession, psychologists are compelled to look into the mirror and critically examine their own ethical behavior. Certainly, the Hoffman Report has set the stage for such an examination. As scientists, psychologists are also obligated to maintain an awareness of the powerful forces of subjectivity and bias and to strive, to the best of their ability, to provide factual evaluations and objective recommendations. To paraphrase Alexander Solzhenitsyn, it is not that the truth is too difficult to see that we make mistakes. We make mistakes because the easiest and most comfortable course is to seek insight where it accords with our emotions.[7]

The questions provided to the Hoffman team set the stage for psychology's treacherous trio: confirmation bias, cognitive dissonance, and motivated reasoning.[8] The Hoffman team acknowledges that they "are not psychologists" nor did they have any previous familiarity with the "people, processes, organization or history of APA."[9] This acknowledgement raises the question of whether a judge, trained to weigh and balance the facts on both sides of an argument, rather than a prosecutor, would have been a more appropriate choice for an independent, neutral review.

The original questions, as identified in the Board's 14 November 2014 resolution, were as follows:

> whether APA colluded with government officials to support torture, as evidenced by
>
> - whether APA supported the development or implementation of enhanced interrogation techniques that constituted torture;

[5] Retrieved from http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf

[6] Retrieved from http://www.apa.org/about/apa/strategic-plan/default.aspx

[7] Peace and Violence, sct. 2, in Index No. 4, London, 1973.

[8] Phrase coined by Sam McNerney, 7 September 2011, Internet post. Retrieved from http://whywereason.com/2011/09/07/psychologys-treacherous-trio-confirmation-bias-cognitive-dissonance-and-motivated-reasoning/

[9] Hoffman Report, 2 July 2015, p. 5 (Text page numbers rather than pdf page numbers are cited here and throughout this report.)

- whether changes to Ethics Code Standard 1.02 or the formation and/or report of the PENS Task Force were the product of collusion with the government to support torture or intended to support torture; and
- whether any APA action related to torture was improperly influenced by government-related financial considerations.[10]

The Hoffman Report appears to conclude that the answer to each of the three Board questions is "no."

To reach a positive conclusion, the Hoffman team reinterpreted the Board's questions at the encouragement of the Special Committee.[11] At some point, the Special Committee expanded the scope of the investigation to include "the relevant issues in Risen's book and the critics' allegations regarding the changes to APA policies and the driving forces behind those changes."[12] The Special Committee requested that the Hoffman team spend time with the critics as a prelude to the "independent" investigation. In his meeting with the Council of Representatives during the APA annual convention in August 2015, Mr. Hoffman emphatically confirmed that he had, indeed, spent considerable time doing just that. While even the initial approach to the problem at hand forms a potential for confirmation bias, this relationship apparently continued over the entire course of the investigation.[13,14]

In an effort to identify the science, practice, and membership implications arising from the Hoffman Report as well as potential policy and process improvements for Division 19, Tom Williams, PhD, Division 19 president, established Presidential Task Force Division 19 (TF19) shortly after the Hoffman Report was leaked to the press. This effort was unanimously supported and approved by Division 19's EXCOM. His charge to TF19 was to maintain the highest degree of integrity and objectivity in reviewing the Hoffman Report and the supplemental materials. TF19 relied upon our expertise as scientific

[10] Hoffman Report, 2 July 2015, p. 64.

[11] Ibid., p. 1.

[12] Ibid., p. 64.

[13] "So, Hoffman and his team of six have been active for the last seven months. I know I and my colleagues decided to help him. We had a number of phone meetings and gave him all the documents we had, and encouraged others to do so. We were hopeful that he was the real deal, and it turns out that he was." Interview with Dr. Stephen Soldz by Amy Goodman, Democracy Now!, 13 July 2015.

[14] TF19 notes that in their "Comments by Drs. Stephen Soldz and Steven Reisner to the Board of APA that were suppressed until the official release of the report," Drs. Soldz and Reisner state that "In late June, 2015, as they prepared to receive the Hoffman Report, the APA Board asked to meet with us. . . . The Board requested and we agreed to keep the substance of our discussions confidential until the report became public." Retrieved from https://www.reddit.com/r/AcademicPsychology/comments/3cwswf/hoffman_torture_report_was_released_apa/ This arrangement sounds similar to certain relationships described in the Hoffman Report as constituting "collusion" between APA and DoD.

practitioners and our experience as psychologists working with complex organizations in parsing the facts, the fallacies, and the inconsistencies contained within that document. While acutely aware that there will be some who will immediately discount our efforts, precisely due to our membership in Division 19, TF19 remains optimistic that the foundations of methodology, logic, and rationality that underscore our profession remain dear to others. The specific terms of reference are provided in Appendix A.

TF19 consisted of seven individuals. Sally Harvey, PhD, served as the chair, with Janice Laurence, PhD; Larry Lewis, PhD; Deb Engerran, PsyD; Joseph Bonvie, PsyD; Michael Oganovich, PsyD; and Jennifer Barry, MA, as members. The team was assisted by Angela Legner, MA. Members of TF19 were chosen to achieve a balance between those with operational, clinical, and research expertise. The members are serving or have served with each of the military services and/or as civilians within the DoD and academia. One member is a doctoral student, another an early career psychologist. Several, but not all, have held officer positions within APA. In the interest of transparency, while none of TF19 members were interviewed by the Hoffman team, Dr. Laurence was mentioned in the report within the context of her position as president, Division 19, in 2001. In addition, several members of TF19 are colleagues of psychologists who were named in the Hoffman Report; military psychology is, after all, a small community.

It was beyond the charge given to TF19 to critically examine the entirety of the 542 pages of the Hoffman Report - a document that included thousands of pages of supporting documents compiled over the course of a nearly eight-month long investigation - for factual errors and/or erroneous assumptions. As such, this analysis was limited to a review of the material as it applied to the division or any Division 19 member. Of the 167 individuals named in or interviewed for the Hoffman Report, 15 were or are members of Division 19. Two of these, Norman Anderson, PhD, and Barry Anton, PhD, were excluded from our analysis as they are currently members of every APA division, indicative of their overall allegiance to the larger organization. The list of 13 psychologists who were, or are, members of Division 19 during the period examined by the Hoffman Report is included in this report's Appendix B.

The report consists of five sections - Introduction, Findings and Recommendations, Historical Context, Responses to the Terms of Reference, Summary Observations, and Appendices A - C. TF19 recognizes that the placement of the Findings and Recommendations near the beginning of this report is a departure from the usual format; however, the cumulative weight of these items, amid the significant challenges facing both Division 19 and APA, warranted this editorial decision.

TF19 Summary of Findings

TF19's investigation into the Hoffman Report was limited to Division 19 as an institution and to its membership; however, TF19 recognizes that many of the recommendations carry implications for the greater APA. After reviewing the Hoffman Report and its supporting documents, TF19 concluded there is no evidence that Division 19 has functioned in the past or functions at present under unethical policies or procedures or that any individual member of the division engaged in unethical behavior concerning interrogation support.

Findings

- There was no evidence of "collusion" as defined by the Hoffman team. The conclusions in the Hoffman Report are based on 1) an inaccurate understanding of DoD interrogation policies in place when the Presidential Task Force on Ethics and National Security (PENS Task Force) met in June 2005, 2) an inadequate understanding of how military interrogations are conducted, 3) a misconception of military culture, and 4) a deep bias against military psychology and military psychologists. There was, however, substantial evidence to indicate that a significant degree of cooperation did occur, specifically during the events surrounding the PENS Report and within the relationships that existed between DoD and APA. The Hoffman Report did not produce evidence that this degree of cooperation was greater than what ordinarily occurs when APA writes specialty guidelines for other specific areas of psychological practice. Specific elements central to the scientific method – consideration of other explanations, peer review, and data sharing – were absent from the process utilized by the Hoffman team.
- There was no evidence in the Hoffman Report to support the conclusion that the marital relationship between COL(R) Debra Dunivin, PhD, and former APA Director for Professional Practice Russ Newman, PhD, resulted in 1) any loosening of the ethics guidelines governing military interrogations, allowing for abusive actions; 2) any support for abusive interrogation techniques or violations of human rights; or 3) any difference in how the PENS Report, which placed an absolute prohibition against torture, would have been written had Dr. Newman not attended as an observer.
- TF19 found that meaningful, ethical, and supportive field guidance was provided by members of Division 19, and substantial efforts were made to standardize policies governing the role of psychologists consulting to interrogations through both training and ongoing consultation.

While this support was provided by Division 19 members, it was not offered under the umbrella of Division 19 but rather as a component of employment with DoD.

- TF19 found no evidence that any Division 19 practice, process, or policy unduly contributed to or inappropriately influenced APA's decision making regarding 1) the selection of PENS Task Force members or 2) APA's usual manner of exercising internal checks and balances within its ethics policies.
- Division 19 has been consistent in its insistence that regard for human welfare and human rights is a core component of the ethical practice of psychology, regardless of the setting or location of that practice. TF19 did not find any evidence to indicate that any military psychologist engaged in unethical interrogation-related activity following APA's adoption of the PENS Report in July 2005, or any military psychologist lacked appropriate and sufficient interrogation-related guidance following adoption of the PENS report as APA policy.
- There was no evidence to indicate that any member of Division 19 failed to live up to APA's core values with respect to interrogation support.
- There was no evidence of any *quid pro quo* between Division 19 and the APA or DoD with regard to any of the issues raised in the Hoffman Report, to include the PENS Report.
- In light of these findings, TF19 found no basis for an apology from Division 19 leadership for any actions of the division or its members.

Recommendations for Action: Division 19 Executive Committee

TF19 provides the following recommendations for consideration by the Division 19 EXCOM:

- That Division 19 leadership continue to insist that the APA Ethics Code be based upon behavior as opposed to setting, location, or employer.
- That a neutral party with the requisite competence and experience conduct a thorough, neutral review of the Hoffman Report in its entirety to include its methodology, given the report's demonstrated bias and known inaccuracies, with a response to this request for action received prior to 15 December 2015.
- That Division 19 leadership requests an explanation from the APA Board of Directors regarding the following events, each of which has had a deleterious impact upon either Division 19 or a Division 19 member, with a response to these issues be received prior to 15 December 2015:
    - why, as evidenced by the Board's proposed timeline of events related to the release of the Hoffman Report, the Board did not make part of this process an opportunity for

those named in the report, including Division 19 members, to correct inaccuracies prior to the report's public release, originally scheduled on/or about 15 July 2015;

- what steps the Board took to obtain a legal analysis to determine the impact that the Board's proposed resolution would have on military psychologists, specifically the resolution's "BE IT RESOLVED" clause that states that the United Nations rather than the U.S. Government will now determine compliance with international law, including the U.N. Convention Against Torture and the Geneva Conventions to which the United States is a signatory;
- the decision and process by which the Board recommended that Council adopt the August 2015 Resolution prohibiting psychologists' involvement in military interrogations, despite the absence of any credible claim that any DoD psychologist has engaged in unethical interrogation-related activity in the decade following APA's adoption of the PENS Report in July 2005;
- the decision and process by which the Board recommended that Council adopt the August 2015 Resolution, specifically the resolution's "BE IT FURTHER RESOLVED" clause that states military psychologists working in certain detention settings may only work directly for the detainee or "for an independent third party working to protect human rights," conditions that would preclude a military psychologist working for the DoD from providing mental health care to detainees, in apparent contradiction to the Geneva Conventions, which require that detainees receive adequate medical care;
- the decision and process by which Steven Reisner, PhD, and Stephen Soldz, PhD, were provided access to the Hoffman Report and allowed to meet with the Board with their recommendations at the Board's meeting on 2-3 July 2015, while military psychologists named in the report, to include the Division 19 Council Representative, did not gain access to the Hoffman Report until the following week. This decision is especially puzzling given that Drs. Reisner and Soldz were coauthors of "All the President's Psychologists,"[15] which made numerous assertions that the Hoffman Report found to be without merit;
- the decision to insist that William Strickland, PhD, a past-president of Division 19, be recused from any dealings related to the Hoffman Report in light of the fact that other

[15] Retrieved from http://www.nytimes.com/interactive/2015/05/01/us/document-report.html

members of the Board, who were not recused, appeared to have had as least as much involvement in the relevant events;

- the justification and process by which the ethics complaint against COL(R) Larry James, PhD, was disclosed to the public, in apparent violation of APA bylaws and the Ethics Committee's 2002 "Rules and Procedures" governing the disclosure of confidential information regarding ethics matters;
- the decision made by the Special Committee to apologize to detainees and their families, issued at a town hall meeting during the 2015 annual convention, specifically, on behalf of whom the apology was issued and what actions warranted that apology;
- what steps the Board took, consistent with its fiduciary duty to APA membership, including Division 19 members, to monitor the cost associated with the Hoffman Report as it began to exceed, many times over, the original estimated budget of $400,000 to $800,000, and is now approximately $5,000,000;
- given that military psychologists named in the report were not informed that the Hoffman Report was under revision and that changes would be made to the report, the decision and process by which it was determined that the Hoffman Report would be revised, who was informed of this decision when the decision was made, and why Division 19 members named in the report were not informed that they should contact Mr. Hoffman directly because he was producing an errata sheet and a revised report;
- what steps the Board will take to correct the Hoffman Report to ensure that the report 1) is based solely upon accurate information regarding DoD policies related to interrogation, 2) conveys an adequate understanding of how military interrogations are conducted, 3) is informed regarding military culture, and 4) is free from bias against military psychology and military psychologists; and
- how APA intends to repair the damage that has been done to Division 19 members who did not have an opportunity to respond prior the report being made public.

- In the interest of accountability and transparency,[16] that the Board release all material referenced or used in the Hoffman Report, with a response to this request received prior to 15 December 2015. TF19 notes that this request is consistent with APA Ethical Standard 8.14

[16] TF19 concurs with Susan McDaniel, PhD, that "we have much work ahead as we work to make APA more transparent." Thomas, J., *The National Psychologist,* (2015, 13 October). Retrieved from http://nationalpsychologist.com/2015/10/apa-resets-moral-compass-at-toronto-meeting/102996.html

(Sharing Research Data for Verification). TF19 recommends that Division 19 members, past and present, who are requesting this information to clear their names, receive the same cooperative and accommodating effort from the Board as the APA was with the Hoffman team who stated "we received complete cooperation from APA which opened up all its electronic and hard-copy files to us."[17]

- That Division 19 leadership request that the APA Board explain whether, in its response to Brian Baird's[18] 17 September 2015 letter, in which Dr. Baird criticized APA 2015 Resolution which prohibited psychologists' support to interrogations, the Board intended to state that military psychologists have been given insufficient guidance regarding the appropriate conduct of interrogations and, if the Board did so intend, what example the Board has of any military psychologist lacking appropriate guidance regarding the conduct of interrogations after the PENS Report became APA policy in July 2005.
- That Division 19 leadership continue to seek multiple avenues for continuing education and mentorship opportunities for all APA members and the profession of psychology illustrative of the challenges within military psychology, to include national security.
- That the EXCOM of Division 19 establish a special committee to identify and support nominee to APA committees, task forces, and working groups.

Historical Context for TF19 Analysis of the Hoffman Report

The very history of APA includes a rich interconnection with the military and military psychologists. TF19 recognized that alongside an appreciation of this history, it is also important to recognize that DoD is an organization with a unique culture, one whose structure and processes may be unfamiliar to many readers. TF19 felt it imperative, therefore, to provide historical context, perspective, and a foundation of these connections to assist the reader with an understanding of the nature of the Hoffman Report.

This section is divided into four subsections: Psychology and the Military, The Department of Defense and Psychologists, Detainee Interrogations and Behavioral Science Consultation Teams, and The Evolving Role of Behavioral Science Consultation Teams.

[17] Hoffman Report, 2 July 2015, p. 8.

[18] Brian Baird, PhD, is a clinical psychologist and former member of Congress who has been the recipient of numerous APA political action committee donations and has been a strong supporter of issues of importance to the profession of psychology.

Psychology and the Military

TF19 felt it imperative, in developing an understanding of the nature of the Hoffman Report, to provide context and perspective as well as a foundational base for military psychology in psychology's history. In 1917, then-APA President Robert Yerkes observed the actions of other sciences in assisting the military as the United States was preparing to enter World War I. He established 12 committees within APA to gather information on potential applications of psychology to the national defense effort. These committees included the Committee on Psychological Problems of Aviation, including Examination of Aviation Recruits; the Committee on Propaganda Behind the German Lines; and the Committee on Tests for Deception, which investigated the use of physiological measures to determine truthfulness, a precursor of the polygraph. The subsequent use of psychometrics in assessment and selection of recruits firmly established the credibility of psychology. The applications of psychology grew exponentially during World War II, with expansion of testing for individual abilities; research in the areas of ergonomics, productivity, motivation, and morale; as well as applications to instruction, training, and leadership. During the Cold War, psychologists applied their science to research, evaluation, training, and education for issues raised by the specter of nuclear war. Military psychologists served as clinicians during the Korean and Vietnam Wars, in hospitals as well as on the battlefield. In sum, most psychologists today can trace their professional foundation and legacy, at least in part, to collaboration with the U.S. military. TF19 characterizes this close working relationship as collaboration, not "collusion."

Over the past 75 years, the U.S. military has been a significant change agent in American culture in areas that the general population had difficulty accepting, such as integration of people of color; women; and most recently, the lesbian, gay, bisexual, and transgender community. In addition, psychologists within the military continue to be in the forefront with research and clinical approaches to posttraumatic stress disorder, substance abuse, and traumatic brain injury as well as to the social, educational, and treatment needs of military families and veterans. There are psychologists who lead health clinics, chair departments, and advise senior leaders within DoD regarding behavioral health and policy actions. Today, psychologists are addressing a multitude of additional challenges – resiliency and well-being; the "performance triad" of sleep, nutrition, and activity; suicide; risk management; and issues related to national security. These topical areas carry significant potential for improvements in treatment, interventions, and policies that extend far beyond the boundaries of military psychology. By putting their skills to work in such areas as clinical care, assessment and selection, training and instruction,

program development, broad-based research, and other important applications, such as operational psychology, psychologists working within DoD have transformed psychology into an integrative discipline that spans a diversity of fields.

The vast majority of military psychologists complete a clinical internship within their respective service as a component of their graduate education. Today, there are 11 internship sites through the Army, Air Force, and Navy, training 68 students annually. These internships are all APA accredited. In 1958, the Army program conducted through Walter Reed National Military Medical Center became one of the earliest programs accredited by APA. Upon completion of the internship, dissertation, and licensure requirements, a military psychologist can be assigned to any number of positions, depending upon the needs of the service and, to a degree, individual interests. Specialized fellowship training is also available to uniformed military psychologists in a number of areas, including aeromedical psychology, pediatric psychology, forensic psychology, health psychology, and neuropsychology. While not all who start their careers as uniformed psychologists complete a military career, those who remain experience a multitude of opportunities to expand their skills through positions of increasing responsibility and scope.

Division 19 is one of the charter divisions that emerged from the 1945-1946 reorganization of APA with the American Association of Applied Psychology. Its membership of over 1,200 represents one of the most diverse divisions within APA, composed of clinicians, consultants, researchers, educators, and students. Most members of Division 19 are civilians; some have military experience; and a few are serving on active military duty. Its members work in various roles across settings in academia, private practice, research labs, private companies, not-for-profit organizations, and the Veterans Administration. The division's many international members also work in a variety of the aforementioned capacities, including for foreign governments and agencies. While small in numbers, it is one of the few divisions within APA that has demonstrated growth over the past several years.

It must also be noted that Division 19 has dealt with controversy throughout much of its history, a legacy that continues to this day. Perhaps the most serious conflict occurred during the Vietnam War, when Division 8, the Society for Personality and Social Psychology, introduced a resolution for the abolition of Division 19 based solely upon opposition to the war. Never formally considered by Council, this resolution represented a significant break within APA in its long tradition of supporting psychology within the U.S. military services. Similar issues were raised during the Gulf War, as objections arose

regarding the roles of psychologists within the military. This dissension was stalled when APA honored several uniformed military psychologists for their service during the war at the 1991 annual convention.

Another product of the cooperation that also involved a measure of controversy involved the DoD Psychopharmacology Demonstration Project, an effort that produced 10 uniformed psychologists credentialed to prescribe medications. While the debate surrounding this effort arose primarily outside of APA, the question of psychology's "identity" was central to the discussion. Although the project ended in 1997, its influence continues to reverberate today in jurisdictions that have approved psychologists' prescription privileges.

Another controversy involved the conflict over DoD's ban of gays and lesbians serving in the military. In 1992, Council overwhelmingly supported a resolution that banned advertising by the military services for job openings and internships at APA conventions and within APA publications. In 2001, the issue resurfaced following a letter from Janice Laurence, PhD, then president of Division 19, to the president of APA, Norine Johnson, PhD, pointing out that the ban was not DoD policy but rather U.S. law that only Congress and the President could change. Pressuring the military services was and would continue to be ineffective. In 2003, the APA Task Force on Sexual Orientation and Military Service was established, composed of members of Divisions 19 and 44, the Society for the Psychological Study of Gay, Lesbian, Bisexual, and Transgender Issues. This task force recommended ending the ban, and the Council quickly passed this recommendation as a resolution. Of note, military psychologists within the DoD were very influential in the subsequent repeal of "Don't Ask, Don't Tell," with their research proving critical in informing policy makers.[19] The senior author of the DoD Comprehensive Review Report was joined by several colleagues, all military psychologists and members of Division 19, in recommending to President Clinton that the ban on gays and lesbians serving in the military be lifted. These members worked closely with one another, some of whom were APA staff, some of whom were military members, and some of whom were members of Divisions 19 and 44. All of these individuals collaborated to find common ground.

The facts are straightforward: Many of the advances in psychology and APA itself have been forged by military psychology in war or the preparation for war. Much of the early history of APA and Division 19 was devoted to developing psychological tools to help the U.S. military services prepare for combat and perform well under fire and then to treat the mental ravages of war. Military psychology has also

[19] Gade, P. (2012, September). Repealing don't ask, don't tell: A brief history, Society for Military Psychology. Retrieved from http://www.apadivisions.org/division-19/publications/newsletters/military/2012/09/spotlight-history.aspx

played a significant role in advancing the success and contentment of all people by developing theory to understand, and tools to measure, aptitude and personality, transformational leadership and organizational change, job performance and satisfaction, ergonomics and workplace factors, and how to treat posttraumatic stress disorder and mild traumatic brain injury. Psychologists within DoD have participated in humanitarian missions, contributed to efforts to prevent violence, and worked to defuse conflict. Despite the history of accomplishments and contributions of military psychologists to the profession as a whole over many years, some APA members find our profession's foundation in national defense and war objectionable. These psychologists prefer to turn a blind eye to military psychology's overwhelmingly constructive history of positive accomplishments.

The Department of Defense and Psychologists

The following provides a very brief description of the DoD. TF19 considers this description important in light of the emphasis placed within our profession to be mindful of differences,[20] to include culture - the military is a culture. The Hoffman team acknowledged that they had very little understanding of the profession of psychology prior to beginning their investigation; an acknowledgment that they were equally unfamiliar with military culture would have been beneficial, with an explanation of what specific steps the team took during the course of the investigation to familiarize itself with military culture. Unfortunately, the report suggests that the Hoffman team made very little effort in this regard.

The DoD consists of the military services as well as a host of other agencies focused upon intelligence, research, and logistics. The Central Intelligence Agency (CIA), Department of Homeland Security, and the Federal Bureau of Investigation are not DoD entities, but they do coordinate activities in areas of mutual concern. The DoD is a federal agency that operates with established processes, policies, and regulations. The DoD operates under the guidance of the Secretary of Defense (SECDEF), a presidential appointee confirmed by the U.S. Senate. Each of the military departments falls under the purview of a civilian secretary, each of whom is also confirmed by the U.S. Senate. Both uniformed members and civilian employees take an oath to uphold the U.S. Constitution as a condition of their service. Uniformed members are also subject to the Uniformed Code of Military Justice (UCMJ).[21] Article 90 of

[20] Standard 2.01 (Competence): b) Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language or socioeconomic status is essential for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation or supervision necessary to ensure the competence of their services, or they make appropriate referrals, except as provided in Standard 2.02, Providing Services in Emergencies.

[21] Retrieved from http://www.ucmj.us/

the UCMJ makes it clear that military personnel must obey lawful commands. This same law also mandates that uniformed personnel have an obligation and a duty to disobey unlawful orders. While DoD has an established hierarchy, the very complexity of the organization depends upon cooperation and collaboration in making decisions and formulating policy. As opposed to the perception that these actions are achieved by either individuals or small groups working alone, this process requires multiple reviews, compromise, and consensus by subject matter experts, stakeholders and senior leaders.

One of the fundamental errors repeatedly echoed throughout the Hoffman Report involves the relationship between U.S. and international law. Uniformed members of the military, including psychologists who serve as officers, are bound by oath and regulation to uphold the U.S. Constitution and federal laws. As such, for military psychologists, international law cannot take precedence should there be a conflict between the two; there are a number of international laws, for example, to which the United States is not a signatory. That said, when the United States is a signatory to an international law, then that edict becomes a part of U.S. law. The facts are that the United States is a signatory to the Geneva Conventions as well as the U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). This fact was clearly articulated by MAJ Nathan Hoepner who, in August 2003, responded to an exhortation to "take the gloves off" with regard to interrogation techniques:

> We need to take a deep breath and remember who we are. Those "gloves" are . . . based on clearly established standards of international law to which we are signatories and in part the originators. . . . It comes down to standards of right and wrong – something we cannot just put aside when we find it inconvenient. . . . BOTTOM LINE: We are American soldiers, heirs of a long tradition of staying on the high ground. We need to stay there.[22]

While the Hoffman Report cites MAJ Hoepner as a rare example of a military officer taking a stand against abuse, the report ignores that this military intelligence officer's unambiguous stance is precisely that taken by the PENS Report[23] in Statement 4: Military psychologists are bound by international

[22] Hoffman Report, 2 July 2015, p 71. The Hoffman Report describes MAJ Nathan Hoepner as an "unknown officer." Yet this quotation, included in the Hoffman Report, appears on pages 168-169 of the Senate Armed Services Committee Report (SASC). The SASC Report clearly identifies the author of this quotation as MAJ Hoepner, who was serving as the Operations Officer for the Army's 501st Military Intelligence Battalion. Report of the Committee on Armed Services, United States Senate, *Inquiry Into the Treatment of Detainees in U.S. Custody*, November 20, 2008 (SASC Report). Retrieved from http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf

[23] "In July 2013, APA's governing Council of Representatives adopted the 'Policy Related to Psychologists' Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.' This policy unifies into a single document prior APA policies dating to 1986 related to detainee welfare and interrogation. As part of the policy reconciliation process, the council also voted to rescind the 2005 Report of the APA Presidential Task Force on Psychological Ethics and National Security (PENS) and two other APA policies dated 2007 and 2008. These policies had become outdated or rendered inaccurate with the passage of subsequent policies, most notably a 2010

treaties to which the United States is a signatory, to include the Geneva Conventions and the CAT. The Hoffman Report erroneously asserts that "the [PENS] report rejected the use of or reference to international law, except to the extent that it was incorporated into and consistent with U.S. law (as then defined, including through the DOJ memos"; p. 23). The Hoffman team failed to note that the memos at issue - the "Bybee memo" and the "Yoo memo" - had been publically withdrawn and superseded in December 2004 by the "Levin memo," a document that underscored the requirement to adhere to the CAT as well as applicable federal law,[24] which includes the Geneva Conventions.

In sum, by the time the PENS Task Force convened in June 2005, the applicability of the CAT and the Geneva Conventions to DoD interrogations had been reaffirmed and, as such, was clearly identified in Statement 4 of the PENS Report:

> Psychologists involved in national security-related activities follow all applicable rules and regulations that govern their roles. . . . Psychologists have an ethical responsibility to be informed of, familiar with, and follow the most recent applicable regulations and rules. The Task Force notes that certain rules and regulations incorporate texts that are fundamental to the treatment of individuals whose liberty has been curtailed, such as the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and the Geneva Convention Relative to the Treatment of Prisoners of War.

Today, there are approximately 700 uniformed and 1,250 civilian psychologists within the military services of DoD. The vast majority of these professionals serve in clinical roles, providing care for their organizations' members and, for the uniformed services, their families; since 9/11, the number of clinicians within the Army has nearly doubled. In addition to civilian research psychologists who work under contract, there is a much smaller subset of uniformed psychologists who are focused upon research or staff functions and an even tinier group of psychologists whose primary duties are termed to be "operational," approximately 50 across all the military services. At present, the federal government is the single largest employer of psychologists; the Veterans Administration is the largest single source of internships – 224 sites, at present; and the DoD provides substantial support to universities and foundations with respect to research funding.

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revision of the APA Ethics Code and the 2013 policy." Retrieved from http://www.apa.org/news/press/releases/2005/07/pens.aspx

[24] Retrieved from http://www.justice.gov/sites/default/files/olc/opinions/2004/12/31/op-olc-v028-p0297_0.pdf

Detainee Interrogations and Behavioral Science Consultation Teams

As long as there have been wars, there have been interrogations of captives, with techniques ranging from seemingly casual conversation to overt torture. There is ample evidence to support the charge that some detainees from the conflicts in Afghanistan and Iraq were subjected to interrogation techniques that constituted torture and, without doubt, were cruel, inhuman, and degrading. However, it is critical to note that the time frame for those actions was from 2002 to 2004.

What the Hoffman team completely overlooks is this: DoD made concerted efforts and took concrete steps to investigate and correct the abuses. DoD conducted 11 investigations,[25] which determined the facts and analyzed the circumstances related to detainee abuse – not only at Abu Ghraib but at Guantanamo and other DoD detention facilities. These reports resulted in 492 separate recommendations leading to action – changes in practices, procedures, and processes. It is imperative to underscore that within DoD, "recommendations" from such investigations are not aspirational – these are mandates. It is also important to be mindful of the timeline described below, as all activities within the military, to include interrogations, are guided by regulations. It is critical to note that none of the aforementioned reports identified a single incident of misbehavior on the part of a military psychologist, a finding also supported by the Hoffman Report,[26] and in fact, several investigations specifically identified the proactive actions taken by psychologists in identifying abuse.[27, 28]

MAJ John Leso, PhD, a military psychologist, and MAJ Paul Burney, MD, a military psychiatrist were the first to be put into the roles that later became the Behavioral Science Consultation Team (BSCT). Neither had the expectation that he would be providing this type of support prior to his arrival to Guantanamo Bay, nor did either have any training or exposure to this type of work in previous assignments. Guantanamo Bay was in its infancy as a detention facility. There were considerable concerns that the detainees held information critical to keeping Americans safe, and the leadership was under constant pressure to produce results. When ordered to write a memorandum identifying

[25] These reports are identified in Appendix C and are readily accessible on the Internet.

[26] During the town hall meeting held during the August 2015 annual convention, Nadine Kaslow, PhD, stated that Mr. Hoffman confirmed this fact during his earlier meeting with the Council of Representatives.

[27] DOD, March 2005, *Report of DoD Detention Operations and Detainee Interrogation Techniques*, Washington, DC, pp. 18-13--18-16.

[28] DOD, February 2009, *Review of Department Compliance with President's Executive Order on Detainee Conditions of Confinement*, Washington, DC, p. 60.

additional interrogation techniques, both attempted to delay. MAJ Leso reached out for consultation,[29] an effort that he continued throughout his deployment. The BSCT received little assistance from the Judge Advocate General (JAG) Corps lawyer assigned to the facility, an individual whose job it was to provide legal guidance consistent with military regulations and U.S. law.[30]

MAJ Leso and MAJ Burney eventually did write the memorandum, which included a statement that specifically cautioned:

> Experts in the field of interrogation indicate the most effective interrogation strategy is a rapport-building approach. Interrogation techniques that rely on physical or adverse consequences are likely to garner inaccurate information and create an increased level of resistance. . . . There is no evidence that the level of fear or discomfort evoked by a given technique has any consistent correlation to the volume or quality of information obtained. . . . The interrogation tools outlined could affect the short term and/or long term physical and/or mental health of the detainee. Physical and/or emotional harm from the above techniques may emerge months or even years after their use. It is impossible to determine if a particular strategy will cause irreversible harm if employed. . . . [31]

However, as this memorandum moved up the chain of command, this paragraph was intentionally removed, and a modified memo eventually reached the office of the SECDEF.[32] Nonetheless, the Senate Armed Services Committee cited this language that was deleted from the memo to rebut the legal analysis allowing certain enhanced interrogation techniques.[33]

With the benefit of a lens polished by 13 years of warfare, a greater appreciation of the literature regarding effective interrogation strategies, extensive guidance provided by professional associations regarding member involvement in interrogations, the development of specialized training, and an acute awareness of the inherent ethical challenges, one can retrospectively posit any number of different responses to this challenging scenario were it to occur today, but one can never re-create that exact time and place or the pressures on an early career psychologist in that situation which occurred in October 2002.

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[29] SASC Report, pp. 39-40.

[30] The legal analysis allowing the use of certain aggressive interrogation techniques provided by the JAG lawyer at Guantanamo in October 2002 was described as "legally insufficient" and "woefully inadequate" by senior military lawyers and an "incompetent product of legal analysis" by Alberto Mora, then U.S. Navy General Counsel. SASC Report, pp. 21, 107.

[31] Ibid., p. 52.

[32] Retrieved from http://detaineetaskforce.org, p. 238.

[33] SASC Report, p. 64.

Historically, Army regulations governing military intelligence interrogations have been used by all the uniformed services. Prior to 6 September 2006, that guidance was provided by Army Field Manual (FM 34-52), Intelligence Interrogations,[34] which mandates that prisoners of war be treated humanely, in accordance with the Geneva Conventions. However, in November 2002, SECDEF Donald Rumsfeld approved several enhanced interrogation techniques, with the exception of waterboarding, for use at Guantanamo, a DoD detention facility; these approved techniques did result in abuse. Subsequent investigations in 2004 revealed that similarly coercive treatment of detainees had occurred in Iraq, specifically in Abu Ghraib, and in Afghanistan.

On 6 May 2004 GEN John Abizaid, then Commander, U.S. Central Command (USCENTCOM), suspended the use of all non-FM 34-52 techniques, including those previously approved by SECDEF Rumsfeld, in the CENTCOM Area of Operations, a swath of 27 countries that includes both Iraq and Afghanistan.[35] FM 34-52 states the following:

> The GWS [Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field], GPW [Geneva Convention Relative to the Treatment of Prisoners of War], GC [Geneva Convention Relative to the Protection of Civilian Persons in Time of War] and US policy expressly prohibit acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of aid to interrogations. (p. 1-8)
>
> Torture is defined as the infliction of intense pain to body or mind to extract a confession or information, or for sadistic pleasure. Examples of physical torture include . . . forcing an individual to stand, sit or kneel in abnormal positions for prolonged periods of time . . . . Examples of mental torture include . . . abnormal sleep deprivation . . . . (p. 1-8)
>
> While using legitimate interrogation techniques, certain applications of approaches and techniques may approach the line between lawful actions and unlawful actions. It may often be difficult to determine where lawful actions end and unlawful begin. In attempting to determine if a contemplated approach or technique would be considered unlawful, consider these two tests:
>
> > Given all the surrounding facts and circumstances, would a reasonable person in the place of the person being interrogated believe that his rights, as guaranteed under both international and US law, are being violated or withheld, or will be violated or withheld if he fails to cooperate.
> >
> > If your contemplated actions were perpetrated by the enemy against US PWs [prisoners of war], you would believe such actions violate international or US law.

[34] Retrieved from http://fas.org/irp/doddir/army/fm34-52.pdf, p. 17.

[35] SASC Report, pp. 222-224.

> If you answer yes to either of these tests, do not engage in the contemplated actions. If a doubt still remains as to the legality of a proposed action, seek a legal opinion from your servicing judge advocate.[36] (p. 1-9)

While documents contained in the Hoffman Report's supplemental material indicate that sleep deprivation was banned at Guantanamo in March 2004,[37] the Church Report noted that the interrogation policy that was in effect on 16 April 2003, a year earlier, did not include either sleep deprivation or stress positions as approved interrogation techniques.[38]

On 24 July 2005, Senator John McCain introduced an amendment (the McCain Amendment) to the annual legislation to fund the DoD. This amendment, also known as the Detainee Treatment Act, 1) restricted military interrogations to only those techniques identified in the Army Field Manual and 2) explicitly prohibited "cruel, inhuman or degrading treatment or punishment." On 28 October 2005, APA sent letters to Senator McCain as well as the ranking members of the DoD Appropriations Subcommittee, in support of that amendment. In those documents, APA cited, as an example of its affirmation of the CAT, its adoption of the PENS Report in June 2005.[39] On 3 November 2005, DoD Directive (DoDD) 3115.09, Intelligence Interrogations, Detainee Debriefings and Tactical Questioning, was issued, stating "all captured or detained personnel shall be treated humanely . . . in accordance with applicable law and policy."[40] On 6 September 2006, Human Intelligence Collection Operations (FM 2-22.3) was published,[41] translating DoDD 3115.09 into doctrine. Field Manual 2-22.3 provides guidance on interrogations in language that clearly establishes that humane treatment is the standard for all detainees.[42] Executive Order (EO) 13491, Ensuring Lawful Interrogations, was signed by President Obama on 22 January 2009, and explicitly makes the use of the interrogation approaches and techniques described in FM 2-22.3 U.S. law.[43] Individuals who violate these tenets are subject to disciplinary action, courts martial, and/or prison sentences.

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[36] Retrieved from http://www.loc.gov/rr/frd/Military_Law/pdf/intel_interrrogation_sept-1992.pdf, Chap., 1, p. 9.

[37] Binder 5, Hoffman Report, 2 July 2015, GEN Schmidt.

[38] Report on DoD Detainee Operations and Detainee Interrogation Techniques, VADM A.T. Church, III, 7 March 2005, p. 143.

[39] Retrieved from http://www.apa.org/news/press/statements/interrogations.aspx

[40] Retrieved from http://fas.org/irp/doddir/dod/d3115_09-2005.pdf, p. 2.

[41] FM 2-22.3 was the successor to FM 34-52.

[42] Retrieved from http://fas.org/irp/doddir/army/fm2-22-3.pdf, pp. 5-20.

[43] Retrieved from https://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations, (Sec3(b)).

In a nutshell, by the time that the PENS Report was released in July 2005, DoD, in a clear effort to address the abuse that had occurred, had already issued strict policies, tight guidelines, and close oversight for military interrogation activities. Although abusive techniques had been employed in the early years of the conflict, the assertion made in the Hoffman Report with reference to DoD psychologists that "by June 2005, it would have been clear to all well-informed observers that . . . there was a substantial risk that they [enhanced interrogation techniques] were still occurring"[44] is patently and demonstrably false. The conclusion that the Hoffman Report draws from this incorrect statement - that military psychologists and APA colluded in order to keep ethics guidelines "loose" to allow enhanced interrogation techniques - is simply wrong.

Just as APA is a bureaucracy, one that required over five years of consensus building and collaboration to revise the 1992 Ethics Code, so is DoD. That being said, by June 2005, DoD had reacted affirmatively in providing strict, clear, and unambiguous direction for interrogations and detainee treatment. Regulations and policies were consistent in their prohibition of physical or psychological acts of torture. The McCain Amendment, also known as the Detainee Treatment Act, soon made it law that the only the legal interrogation techniques available to DoD were those listed in the Army Field Manual (FM 34-52 and, then, subsequent doctrine, FM 2-22.3, effective September 2006). The methods and procedures in both FMs are consistent with what is allowed by Common Article III of the Geneva Conventions and, as the United States is a signatory, are consistent with U.S. law.

Evolving Role of Behavioral Science Consultation Teams

From TF19's perspective, it is critical to integrate the facts discussed above with the timeline for the BSCTs and the creation of the PENS Report. The BSCT Standard Operating Procedure, in effect at Guantanamo as of 28 March 2005,[45] described the roles and responsibilities of the BSCT team in detail, to include the following cite from Section 10(a), Ethical and Legal Responsibilities:

> In addition to the other duties and responsibilities noted in this document, it is the responsibility of all BSCT personnel to familiarize themselves with and adhere to the UCMJ, Geneva Conventions, applicable rules of engagement, local policies, as well as professional ethics and standards of psychological practice (pp. 6-7).

[44] Hoffman Report, 2 July 2015, p. 65.

[45] Retrieved from http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/testimonies-of-standard-operating-procedures/bsct_sop_2005.pdf. The Hoffman Report states that "attempting to gather definitive information from government sources may be a time-consuming process" (p 5). The documents central to TF19's analysis are readily available on the Internet and took the time required by an internet search to find.

The APA's PENS Task Force was formally established in February 2005 and convened on 24-26 June 2005 – the resulting report was released to the public on 5 July 2005.

Concurrent to the actions of APA's PENS Task Force, the military continued to provide written guidance regarding detainee treatment, interrogations, and BSCTs. As several of the aforementioned investigations had identified a lack of clarity regarding organization structure, command relationships, and the roles and responsibilities of individuals operating detainee facilities, the Army Medical Command issued Special Text Medical Support to Detainees (ST 4-02.46) on 30 September 2005. This document provided guidance with regard to organizational structures, command relationships, and roles and responsibilities of personnel operating internment facilities, to include BSCTs, as well as the detainees' protections under the Geneva Conventions. DoD Instruction 2310.08, dated 6 June 2006, is the regulation covering medical support to interrogation and detainee operations and is the parent document for DoD regarding BSCTs and related activities by psychologists. On 20 December 2006, the Army's Office of the Surgeon General issued Policy Memorandum 06-029, further detailing the roles, responsibilities and limitations of the BSCTs.

The need for training was identified by COL(R) Morgan Banks, PhD, prior to the existence of any policy or doctrine on the use of BSCTs. The BSCT training was initially conducted on an ad hoc basis as ethical and performance standards were established and codified in U.S. Army Medical Command policy. This training was subsequently made into a formal course. This three-week course is funded and run by the Army Medical Department Center and School and conducted in conjunction with U. S. Army Intelligence Center of Excellence at Fort Huachuca, Arizona. The coursework includes an in-depth study of the legal and ethical boundaries associated with this mission, approved interrogation techniques, and reporting responsibilities and processes in the event of violations. To date, 133 psychologists from the Army, Air Force, and Navy have graduated.[46] None of the students who graduated have refused to deploy or participate in the mission, and their informal feedback has served as testimony both to the quality of the course and the value of the mission.

As revealed in the list of witnesses,[47] the Hoffman team did meet with two interrogators with extensive experience at either Guantanamo or Iraq during the period of interest to the Hoffman investigation, Col(Ret) Steven Kleinman and Jennifer Bryson, PhD. Each has spoken out publically against abusive

[46] One additional individual elected to leave. There has been no adverse career consequences for that individual as a result of this decision; she simply returned to her existing assignment.

[47] Hoffman Report, 2 July 2015, Attachment A.

interrogations and has worked with human rights organizations to oppose detainee abuse. Each has stated that the Hoffman Report either significantly mischaracterized their positions or omitted important information from their interviews.[48]

In the Hoffman Report, dated 2 July 2015, (the original Hoffman Report), Col(Ret) Kleinman was purported to have stated "that the 'safe, legal, ethical and effective framework' [as set forth in the PENS Report] was not useful" and that "clinical psychologists in general were not the best kind of psychologists to have on BSCTs in the first place.[49]

In October 2015, TF19 received the following statement from Col(Ret) Kleinman:

> It should be noted that I have served on the training staff for the BSCT course from its inception and am intimately familiar with how psychologists are selected and trained for this role. That experience has led me to two conclusions. First, I adamantly believe that the BSCT concept would benefit from incorporating the research-based insights of a broader array of behavioral scientists, especially social and cognitive psychologists, beyond the current structure that exclusively limits participation to clinical psychologists. This is far more than a nuanced difference; rather, it reflects a substantially different perspective than that found in the Hoffman Report footnote.
>
> Secondly, I have long maintained the position that the presence of clinical psychologists at interrogation centers has the potential to reduce the risk of detainee abuse by identifying interrogators who are exhibiting signs of extreme stress and/or fatigue before they become involved in an abusive scenario, by providing thoughtful and human rights-compliant alternative questioning strategies to interrogators who might otherwise be planning to employ harsh or coercive methods, and by promoting a standard of conduct – in both word and deed – based in large part on their code of professional ethics.[50]

The footnote that included Col(Ret) Kleinman's purported statements appeared in the original Hoffman Report but was omitted in the revised report, dated 4 September 2015. The Hoffman team deleted this passage only after Col(Ret) Kleinman's attorney contacted Sidley Austin.

Dr. Bryson, who was interviewed by two members of the Hoffman team, provided this statement to TF19 in October 2015:[51]

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[48] Col(Ret) Kleinman's report that his remarks were mischaracterized by the Hoffman team are consistent with the statements of numerous other witnesses who likewise state that their comments were mischaracterized. Retrieved from http://www.apa.org/independent-review/responses.aspx. The fact that witnesses have consistently stated that they were misquoted or their comments mischaracterized underscores the importance of having access to the Hoffman source materials.

[49] Hoffman Report, 2 July 2015, p. 297, fn. 1317.

[50] Col(Ret) Kleinman, personal communication, 20 October 2015.

[51] Jennifer Bryson, PhD, personal communication, 28 October 2015.

The Hoffman Report purports to be fair and objective, but it is not. The allegations contained within the report rest largely upon the claim that interrogations conducted by the DoD in 2005 and following, included, or were very likely to include, abusive interrogation techniques. This assumption is false.

The U.S. Army trained me in interrogation at Fort Huachuca, Arizona, in the fall of 2003 in a course designed specifically for interrogators deploying to Guantanamo. The methods of interrogation that were taught were limited strictly to the Army Field Manual 34-52. This training also included teaching about the Geneva Conventions.

I arrived at Guantanamo in 2004 where I worked both as an interrogator and a supervisor of interrogators. When then-Brigadier General Jay Hood arrived as Commander of Joint Task Force Guantanamo in the spring of 2004, he gave everyone at Guantanamo clear orders to follow the Geneva Conventions (i.e. at a time when there was still ambiguity about this coming from American political leaders). As an interrogator at Guantanamo, I was under clear guidance for the humane treatment of detainees. BG Hood never wavered from this stance during the entire time I worked under his leadership. He departed Guantanamo in 2006.

Moreover, Army FM 34-52 was the guide for interrogation when I was at Guantanamo. The preface of FM 34-52 makes clear, "These principles and techniques of interrogation are to be used within the constraints established by FM 27-10, the Hague and Geneva Conventions, and the Uniform Code of Military Justice (UCMJ)." Field Manual 27-10 on the Law of Land Warfare, Section IV.93, informs, **"**No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind." At no time when I was an interrogator at Guantanamo were sleep deprivation or stress positions allowed.

This is how the U.S. military taught interrogation in 2003 and what I applied as my guidance in supervising interrogations during the 24 months I was at Guantanamo in the 2004-2006 time period. In this I had absolutely complete and unambiguous support from BG Hood, who commanded for the majority of the time I was there.

When I first began to read the Hoffman Report, I was struck by how discordant the report was from my experience serving as an interrogator at Guantanamo between 2004 and 2006. I was also struck with by the confusing way that the Hoffman report presents my place within DoD structure. I told the interviewers that my relationship to the APA was strictly through non-DoD contacts and never as a representative of DoD. The final report fails to mention this important fact.

I find it very strange that the conclusions of this report rest upon the assumption about the nature of interrogations in 2005 and, yet, this absolutely vital information was not what the investigators who questioned me focused on. The failure of the investigators to question and gather information related to the underlying assumption is a severe flaw in the report.

TF19 notes the discrepancy between the "findings" in the Hoffman Report and the actual facts. The Hoffman team states how "time consuming" it was to obtain resources and the limitation they faced, secondary to a lack of access to classified material. And yet, when witnesses with highly relevant

information were readily available and openly cooperative, the Hoffman team failed to take this advantage to inform their analysis. It is fair to raise the question about whether the statements made by Col(Ret) Kleinman and Dr. Bryson during their interviews with the Hoffman team were discounted or mischaracterized because they did not correspond with the central conclusions made in the report.

The role of "safety monitor" is, by no means, unique to BSCT psychologists, but the responsibility of anyone who becomes aware of abusive acts during an interrogation. The Hoffman Report described the "safety role" played by BSCT psychologists as "naïve or intentionally disingenuous," concluding that the psychologist would be unable to overcome the pressures inherent within an interrogation, unless there were "clear lines drawn by an external source (e.g., DoD or APA guidelines)."[52] This statement is misleading, at best: Clear guidelines regarding interrogations had been established and were in force by mid-2005. The PENS Report reinforced these guidelines, exactly as it was intended to do, by stating that psychologists must follow the "most recent applicable regulations and rules."

In the initial years of the conflict, 2001-2004, there was a scarcity of experienced interrogators and no formal training for the BSCT role. Not counting the mass screenings that were conducted during Operation Desert Storm in 1991-1992, there were only five interrogators within all of DoD with wartime experience on 11 September 2001, and that experience dated from Vietnam.[53] As time progressed, more experienced and better trained interrogators became involved, and training for the BSCT role became formalized. As a result, the need for the safety role, while still present, became less prevalent. Following the adoption of the PENS Report as APA policy in 2005, there has been no allegation that any BSCT psychologist has engaged in inappropriate interrogation activity or has failed to intervene or report an inappropriate interrogation.

The Hoffman Report's comments, that the safety roles of BSCT psychologists were "naïve or intentionally disingenuous," indicate how little the Hoffman team learned about how effective interrogations actually work and the safeguards that are employed. The Hoffman Report suggests that "safe" and "effective" support to interrogations by psychologists is disingenuous because the two cannot coexist. For the Hoffman team, it is apparent that ethical interrogations are not effective, and effective interrogations are not ethical. The implication of this statement is that interrogations involving psychologists are either safe or effective, but not both. TF19 strongly rejects this erroneous conclusion, which is contrary to the experience of psychologists who have served in the BSCT role.

[52] Hoffman Report, 2 July 2015, p. 295.

[53] Mark Staal, personal communication, 8 October 2015.

There are multiple references within the Hoffman Report regarding the influence of COL(R) Banks and COL(R) Dunivin within DoD. While not to detract from their efforts to provide ethical guidelines and effective training for the BSCTs, it is inaccurate to portray these two individuals as either "DoD officials" or the architects of DoD's policies regarding interrogation support and detainee operations. The development of service-wide policies and regulations is an intensive staff action that involves literally hundreds of individuals over the course of months or, in some cases, years. DoD Instruction 2310.08, the parent document for DoD regarding BSCTs, was developed over the course of months by dozens of military staff members; COL(R) Banks and COL(R) Dunivin did assist in drafting several components of that policy, but these drafts were subject to multiple reviews and approval processes. The Hoffman Report brings forth no evidence to suggest that COL(R) Banks or COL(R) Dunivin were working to impede the development of strict guidance. In fact, the data points to exactly the opposite direction - they were attempting to ensure that there could be no deviation from the strict DoD guidance in place by June 2005. To suggest that these two officers had the authority to establish DoD policy is simply incorrect.

The Board directed the Hoffman team to determine whether APA had colluded with the Bush Administration, CIA, or DoD to support enhanced interrogation techniques.[54] In the 2014 Senate Intelligence Committee Report,[55] 12 such "enhanced interrogation techniques" also referred to as "reversed SERE[56] engineered techniques," are listed:

1. Attention grasp
2. Walling
3. Facial hold
4. Facial slap
5. Cramped confinement
6. Wall standing
7. Stress positions
8. Sleep deprivation
9. Waterboard
10. Use of diapers
11. Use of insects
12. Mock burial

[54] Hoffman Report, 2 July 2015, p. 64.

[55] Retrieved from http://www.feinstein.senate.gov/public/index.cfm?p=senate-intelligence-committee-study-on-cia-detention-and-interrogation-program, p. 32.

[56] For an explanation of Survival, Evasion, Resistance, and Escape (SERE), see p. xxxi of the Senate Armed Services Committee Report. Retrieved from http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf

A 2005 U.S. Department of Justice memo for the CIA identifies 13 interrogation techniques for use by the CIA.[57]

1. Dietary manipulation
2. Nudity
3. Attention grasp
4. Walling
5. Facial Hold
6. Facial Slap or Insult Slap
7. Abdominal Slap
8. Cramped confinement
9. Wall standing
10. Stress positions
11. Water dousing
12. Sleep deprivation
13. Waterboard

While these two lists have considerable overlap, they are not the same. For the purposes of TF19, it is noteworthy that both lists contain stress positions and sleep deprivation, the two techniques that the Hoffman Report asserts that APA and military psychologists were colluding to allow under "loose" ethical guidelines, that is, guidelines that would be no stricter than DoD regulations.[58] However, the Hoffman Report does not limit the object of collusion to stress positions and sleep deprivation; these are examples ("such as," p. 12) of techniques that the "loose" ethics guidelines were allegedly intended to permit. As has been clearly demonstrated, DoD regulations did not allow either technique by June 2005.[59] In fact, when the PENS Task Force met on 24-26 June 2005, the regulations and policies governing the BSCT role did not allow <u>any</u> technique that appears on <u>either</u> of these lists. That is, none of the techniques on these two lists, including stress positions and sleep deprivation, were permitted for DoD interrogations when the PENS Task Force issued its report in June 2005. Thus, the Hoffman

[57] Bradbury, S. G., Principle Deputy Assistant Attorney General. (2005, May 10,) U.S. Department of Justice, Office of Legal Counsel, Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency.

[58] Hoffman Report, 2 July 2015, pp. 9, 66.

[59] On 6 May 2004, GEN Abizaid suspended all non-FM 34-52 techniques within CENTCOM. On 4 June 2004, however, GEN Abizaid approved the use of four techniques found in FM 34-52, none of which are found in either of the lists cited above. Their use was contingent upon the approval of the "first general officer in the chain of command," and specified that none of the techniques could be used beyond a 72-hour period "without a review by the SMU TF [Special Mission Unit Task Force] Commander" SASC Report, p. 224. Nonetheless, TF19 could find no evidence that any of these techniques were used after the PENS Report became APA policy in July 2005.

Report's conclusion that collusion was intended to allow stress positions and sleep deprivation, among other enhanced interrogation techniques, is patently incorrect.[60]

The Hoffman team lists five enhanced interrogation techniques and asserts "In short, by June 2005, it would have been clear to all well-informed observers that abusive interrogation techniques had almost certainly occurred and that there was a substantial risk they were still occurring."[61] By June 2005, it was known to all that abuses taken place. In fact, the very reason the PENS Task Force was meeting was because abusive interrogation techniques had occurred. But, as the Hoffman team should have known, by June 2005, none of the five interrogation techniques the report named in this passage – stress positions, sleep deprivation, threats, playing on phobias, and waterboard—were allowed by DoD. In fact, in a 7 July 2005 letter to the *New York Times*,[62] which the Hoffman Report itself cites, the President of APA gives the use of phobias as an example of a technique prohibited by the PENS Report.[63] The Hoffman Report's allegation that collusion was intended to keep ethical guidelines "loose" and "high-level" in order to allow specific interrogation techniques is contradicted not only by then-existing DoD guidelines but also by how APA was interpreting the PENS Report immediately after the PENS Report became APA policy. All this information was available to the Hoffman team.

Given its considerable resources, it is unclear how the Hoffman team could not have been aware of the relevant DoD policies as those policies existed in June 2005. Although the Hoffman team interviewed multiple witnesses who could have provided this information, the Hoffman team appears not to have been interested. Nor is it clear why the APA Special Committee, upon receiving the report, did not take the time to ensure that the Hoffman Report's characterization of then-existing DoD policies was correct, or, at the very least, did not give those named in the report, who had the relevant knowledge and experience, an opportunity to review the report and to correct inaccurate information before the report was made public. As troubling as these facts are, however, there is an even deeper problem with the Hoffman Report and the Special Committee's actions.

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[60] The Hoffman Report states "during the Task Force's pre-meeting communications, during its 3-day meetings, and in preparing the task force report, Behnke and Banks closely collaborated to emphasize points that followed then-existing DoD guidance (which used high-level concepts and did not prohibit techniques such as stress positions and sleep deprivation) . . ."(p. 12). In addition to being incorrect, the statement is highly implausible on its face: COL(R) Banks and Dr. Stephen Behnke had never met prior to the PENS Task Force meeting (personal communication, Morgan Banks, 22 October 2015).

[61] Ibid., p 65.

[62] Retrieved from http://query.nytimes.com/gst/fullpage.html?res=9404E4D61E31F934A35754C0A9639C8B63

[63] PENS listserv, July 8 2005.

According to the Hoffman Report, the purpose of the collusion was to allow certain abusive interrogation techniques to continue. And yet, the report provides no evidence that the military psychologist who the report alleged to have been primarily involved in the collusion, COL(R) Banks, ever intended to support, allow, recommend, or use such techniques or have any interrogator use them. Rather, the report infers nefarious intent from the fact that COL(R) Banks did not believe that providing a list of specific techniques in the PENS Report or in subsequent APA policy was a good idea.[64]

As a group of lawyers, the Hoffman team is certainly well aware that policy makers frequently grapple with this precise problem – how specific a law, regulation, or policy should be. The fact that policy makers differ on this question is not a sign that they disagree over underlying policy goals, but rather that they have different concepts on how policies should be written. Policy makers struggle with this challenge all the time. Given the number of techniques at issue, it was certainly reasonable for a psychologist in COL(R) Banks's position to conclude that a framework for decision making, rather than a laundry list, was the appropriate approach and was consistent with how standards are written in the APA Ethics Code. The nature of the PENS Report, to provide guidance, is consistent with the approach taken by guidelines in practice areas which provide frameworks for decision making rather than lengthy lists of prescribed actions. And therein lies perhaps the most insidious aspect of the Hoffman Report.

Rather than acknowledge that there could be genuine, honest differences of opinion on how the PENS Report and subsequent APA policy should be written, the Hoffman Report takes differences of opinion and turns them into condemnations. The Hoffman team never acknowledges what it is doing. Whenever there are multiple, plausible explanations for a behavior, the Hoffman Report invariably chooses the explanation that reflects most poorly on military psychologists and that provides the most positive explanation for the critics of APA. Given the very brief, less than one week, time between when the Board received the Hoffman Report, 27 June 2015, and the Board's meeting with the critics, 2-3 July 2015, it is highly doubtful that the Board and Special Committee were able to read the report with the necessary care to fully grasp the scope and degree of bias.

[64] According to the Hoffman Report, COL(R) Banks declined to state categorically that the "safe, legal, ethical, and effective" framework would prohibit sleep deprivation and stress positions in all circumstances. The Hoffman team then makes this purported admission central to their argument that COL(R) Banks's intent in colluding with APA was to ensure that these techniques could continue to be employed (p. 66). This passage is an excellent example of the Hoffman methodology. In fact, in reviewing this passage, it is very unclear as to the specific question the interviewer has actually posed and what point COL(R) Banks is making in response. COL(R) Banks appears to be attempting to determine how the interviewer is using these terms, but the text of the report is ambiguous. This makes it even more important for the Board to make the Hoffman source materials available.

Even more disturbing than the fact that APA expended such considerable resources on a deeply flawed report, is the fact the Special Committee allowed colleagues to be treated in this manner, while it was issuing repeated apologies for unspecified offenses.

With this background, context, and perspective, we move now to the specific terms of reference provided to TF19 by the president of Division 19.

Terms of Reference

TF19 was provided the scope, objectives, and purpose for conducting this review in the form of a "Terms of Reference" (Appendix A), which provided eight major focus areas, listed a-g, for TF19 to address. Several of these objectives, specifically terms of reference a and f, have multiple components. In an effort to reduce confusion for the reader, each term of reference is identified in bold print prior to the ensuing discussion.

a. Carefully review the Hoffman Report to identify and document any objective evidence of "collusion;" any significant conflicts of interest that were not acknowledged by any Division 19 member, and whether there is evidence that meaningful field guidance was not provided that resulted in any Division 19 members' actions that enabled, contributed to, or supported abusive interrogation techniques and/or contributed to violations of human rights.

1. **Collusion:** According to the Hoffman team's description, "the specific question APA has asked us to consider and answer is whether APA officials colluded with DoD, CIA, or other government officials 'to support torture'." Collusion was defined as "a secret agreement, understanding, or cooperation for some harmful, improper, or illegal purpose."[65] The Hoffman Report connected circumstantial evidence to infer and conclude that nefarious acts had occurred, with the implication that these acts would continue. The Hoffman Report's primary finding was that APA colluded with DoD on two levels: in an attempt to "curry favor," a term that the Hoffman team never defined, and in efforts to ensure that the interrogation policies preferred by DoD would not be constrained by APA's ethics guidelines and so would allow certain enhanced interrogation techniques to continue.

The Hoffman Report concluded that APA "intentionally implemented a policy (the PENS Report) that would allow DoD officials to continue to engage in their existing practices based on the guidelines and

[65] Hoffman Report, 2 July 2015, p. 64.

procedures they had in place."[66] The report continues, asserting that these guidelines and procedures were "loose"[67] and, therefore, allowed enhanced interrogation techniques such as sleep deprivation and stress positions.[68] Underscoring this assertion are several themes that are present throughout the report: 1) Interrogation equates to torture; 2) the military, and by extension, military psychologists, have little, if any, concern for either human rights or ethical behavior; and 3) APA abrogated its concern for ethical practice in its quest for favorable treatment from DoD.

The Hoffman Report ignored the corrective actions taken by DoD following the abuses of 2002-2004, including the specific guidance prohibiting enhanced interrogation techniques and direction to utilize only interrogation techniques included in the Army Field Manual. In addition, the Hoffman Report failed to note that the interrogation policy in place by June 2005 (FM 34-52) reiterated that detainee treatment was to be conducted in a manner consistent with the provisions listed in Common Article III of the Geneva Conventions. These actions as well as the subsequent regulations require that detainees be accorded humane treatment, a requirement that was clearly emphasized in the PENS Report by the "absolute" prohibition "against torture and other cruel, inhuman, or degrading treatment."[69] These regulations also specifically prohibit torture as well as acts that are cruel, inhuman, or degrading, as required by U.S. law and international treaties to which the United States is a signatory.

The Hoffman Report's central conclusion regarding the collusion between APA and DoD is further undermined by the extensive efforts that APA took to support passage of the McCain Amendment. The McCain Amendment prohibited "cruel, inhuman, or degrading treatment" and mandated that the only techniques authorized for use in military interrogations were those identified in the Army Field Manual, a regulation that, itself, explicitly forbade the very interrogation techniques that the Hoffman Report alleges were the goal of the APA-DoD collusion. In order to support passage of the McCain Amendment, APA took numerous steps, which included contacting Senator McCain directly to thank him for his attention to human rights in the military context; sending letters to select members of the U.S. Senate urging passage of the McCain Amendment; sending out a grassroots alert to APA members encouraging them to contact their congressional delegations in support of the McCain Amendment; and actively

[66] Ibid., p. 65.

[67] Ibid., pp. 9, 20, 21, 33, 51, 70, 270, and 309.

[68] Ibid., p. 3, 12, 18, 28, and 30.

[69] PENS Report, Statement #1.

lobbying at the subcommittee level, potentially risking Republican support for the funding of a psychology training program.[70,71]

To believe the Hoffman Report's central conclusion, one would have to believe that APA was colluding with DoD to allow enhanced interrogation techniques in June 2005, but within weeks, was publically and aggressively advocating for the humane treatment of detainees through passage of the McCain Amendment. It strains credulity that any reasonable and informed psychologist could find both of these assertions to be correct.

In October 2005, APA Chief Executive Office Dr. Norman Anderson sent a letter to Senator McCain and other Congressional leaders on the Appropriations Committee, invoking the U.N. Convention Against Torture, the U.N. Principles of Medical Ethics, and the PENS Report as documents critical in APA's efforts to "strive for the preservation and protection of fundamental human rights."[72] This public endorsement of international human rights texts alongside the PENS Report directly contradicts the Hoffman Report's assertion that APA was unconcerned with international human rights documents and detainee abuse.[73] In a letter to the *New York Times* on 4 November 2005, the presidents of the American College of Physicians and the American Psychiatric Association joined with the president of APA to state:

> If approved intact by Congress, the McCain amendment, by proscribing abusive treatment of all detainees in United States custody, would help ensure that our colleagues in the national-security setting are never drawn into abusive, harmful or unethical interrogations and detention practices. Above all, it would eloquently clarify our country's values and our traditional, legal and moral commitment against torture and abuse.[74]

In sum, the conclusion that the results of the PENS Task Force were critical to DoD's efforts to retain abusive techniques falls completely apart when viewed in the context of all the facts, including the timeline and an informed understanding of how DoD policy and relevant legislation evolved during the years covered by the Hoffman Report.

The concerns raised within the Hoffman Report regarding misconduct or unethical behaviors by military psychologists supporting interrogations stem from a timeframe, 2002-2004, prior to the establishment

[70] PENS Task Force listserv, January 2006.

[71] In 2015, APA took similar actions in supporting another piece of anti-torture legislation authored by Senator McCain.

[72] Retrieved from http://www.apa.org/news/press/statements/interrogations.aspx

[73] Hoffman Report, 2 July 2015, pp. 9-10.

[74] Retrieved from http://www.nytimes.com/2005/11/04/opinion/torture-detainees-not-in-our-name-716391.html.

of strict guidelines governing interrogation, the PENS Task Force, the McCain Amendment, DoDD 3115.09, the Office of the Surgeon General's Memorandum regarding BSCTs, and FM 22.2-3. Within its Executive Summary, the Hoffman Report includes five references to the substantial risk that abuse would continue in the absence of strict constraints,[75] electing to ignore the fact that by the time the PENS Report was released, those exact strict constraints had been put into place by DoD. Despite the Hoffman Report's concerns regarding the "large loopholes" created by "APA's loose high-level ethics guidelines,"[76] the report fails to provide a shred of evidence that military psychologists, subsequent to the PENS Report, engaged in detainee interrogation abuse. The Hoffman Report, instead, relies upon various unsubstantiated inferences – "it seems," "it is possible," "it is likely" - based upon assumptions or assertions inconsistent with events as they actually unfolded over the following decade.

In brief, although the Hoffman Report indicates that military psychologists "could have" been involved in abusive military interrogations, the report, with a decade of data to drawn upon, provides no evidence that following the PENS Report, any abuses occurred within the context of military interrogations where a BSCT psychologist was involved – because there is no such evidence. There have been thousands of hours of interrogation support and observation provided by military psychologists conducted without incident. In fact, the proactive efforts of military psychologists in preventing and/or reporting abuse have been documented. In contrast, the Hoffman Report does not discuss any of the work military psychologists did to minimize abuse and protect human rights, dismissing the role that psychologists played as safety monitors as "disingenuous." This omission is additional evidence of the confirmatory bias found throughout the report, which, for all intents and purposes, is a prosecutorial brief rather than an objective and/or scientific investigation with a sound methodology.

The Hoffman Report also points to the membership of the PENS Task Force as evidence of collusion. It is fact that, of its 10 members, six had clear connections with DoD. However, it is critical to note that none of the six were either authorized to represent the U.S. Government or authorized to provide any guarantee of benefits or services to APA on behalf of the U.S. Government. The Hoffman Report acknowledges that the DoD members did not act in lockstep fashion; there were areas of disagreements and differing opinions among the DoD members over the course of the meeting. While there is no guidance within APA's current bylaws about the selection criteria for a task force, it appears both logical and prudent to select members who have specific expertise and/or an abiding interest in the focus area.

[75] Hoffman Report, 2 July 2015, pp. 9, 65, 66, and 68.

[76] Ibid., p. 9.

Additionally, there is no way to assess whether this composition was inappropriate or even unusual without reviewing the membership of other APA task forces commissioned to consider specific areas of practice, something which the Hoffman team apparently did not investigate.

Aside from the task force chair, there were three other psychologists on the PENS Task Force. These individuals were, and are, members of divisions and groups that continue to be highly critical of psychologists' roles in interrogations. They each voted to accept the PENS Report on two occasions - first when the task force had completed the report and again after the Ethics Committee recommended revisions. The Hoffman team characterized these individuals as deeply ambivalent about approving the PENS Report, "the three non-DoD members acknowledge that if they had firmly and officially dissented and refused to accept the task force report, they might have made a difference."[77] This characterization stands in stark contrast to the words of these individuals, themselves, who when voting to adopt the report, stated:

- Nina Thomas, PhD: "Beyond impressive, beyond complete." (26 June 2005);[78]
- Mike Wessells, PhD: "Many thanks for sending this excellent revision," (27 Jun 2005); and
- Jean Marie Arrigo, PhD: "The depth, scope and wisdom of this document are indeed impressive" (29 June 2005).

Dr. Arrigo made several additional approving comments regarding the process and the composition of the PENS Task Force:

- "Thanks to all, especially the military psychologists, for an enriching and heartening experience of democratic process. I am grateful for the opportunity to participate in this process." (27 June 2005) ;
- "I think the constitution of the Task Force was very fine and also appropriate. It could be favorably compared to the 1993-1995 President's Advisory Committee on Human Radiation Experiments, for example, which did not include any military or intelligence expertise on the Committee or staff." (11 July 2005); and
- "I am very pleased with the Task Force participation of psychologists from the armed services. I am not aware of any commitment from psychologists who work for the CIA or other intelligence agencies." (16 August 2005).

To argue that the unanimous decision to approve the PENS Report by email - not only once, but twice, after members of the task force had left the meeting and had been given an opportunity to reflect on

[77] Hoffman Report, 2 July 2015, p. 25.

[78] All six of the following quotations are from the PENS Task Force listserv, which Dr. Arrigo made public. Retrieved from http://www.propublica.org/documents/item/1445-e-mails-from-the-american-psychological-associations-task-force-on-ethics-and-national-security#p=1

the report - was the result of "groupthink"[79] or that the results of the PENS process were the product of a "larger counterintelligence operation"[80] is simply not grounded in any data. At minimum, these assertions appear to be the result of revisionist history.

With respect to the charge that APA colluded with DoD to "curry favor," if the "favors curried" were to further the economic, professional status, and employment aims of the Association, this effort is completely consistent with the aims of the APA's strategic plan "to excel as a valuable, effective, and influential organization advancing psychology as a science." If APA's objective was to curry favor with a government entity, it would have made much more sense for APA to pursue the CIA, a non-DoD organization with considerable financial resources available for this purpose as described in the 2014 Senate Intelligence Committee Report.[81] However, the Hoffman Report suggests that APA efforts in that regard were likely derailed by the retirement of APA's key contact in 2005, prior to the PENS Task Force meeting.[82] If APA had been motivated by government contracts as the Hoffman Report suggests, the retirement of a single individual would hardly have served as a deterrent. Again, a reasonable, informed psychologist could not view this rationale offered by the Hoffman Report as persuasive, much less convincing, for why APA did not pursue the CIA in its policy work on interrogation.

Despite the Hoffman Report's conclusion that "we did not find that APA was motivated by any specific contract or grant, or that APA itself received any substantial grants, contracts or other payments from DoD during this period,"[83] the report, nevertheless, describes APA's adoption of the PENS Report as:

> a very large victory for those who were focused on growing opportunities for employment and influence for psychologists, especially compared to psychiatrists. By winning the primary position with DoD regarding which mental health providers would provide support for DoD interrogations, APA cemented its position with DoD in a manner that is likely to produce substantial employment and other financially-beneficial opportunities for psychology.[84]

The Hoffman Report was written in 2015, a decade after the PENS Report was adopted, and it is true that the number of psychologists employed by the military has grown during this time, a fact readily

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[79] Hoffman Report 2 July 2015, p. 25.

[80] Ibid., p. 344.

[81] The Senate Intelligence Committee Report on Torture, p. 11 of the findings and conclusions section (Conclusion #13).

[82] Ibid., p. 10.

[83] Ibid., pp. 68-69.

[84] Ibid., p. 40.

explained by DoD's evolving understanding and appreciation of the terrible effects of war on the psyche and efforts to prevent and treat war injuries. Only a very few of these professionals are engaged in the practice of operational psychology, as the growth has been almost solely in the clinical arena.[85] Today, there are approximately 1,950 psychologists – military, civilian, and contractors – supporting the Army, Air Force, and Navy.[86] Of that number, 50 or 2.6% have an operational focus, a growth of approximately 10 psychologists over the past decade, hardly what one would fairly characterize as "substantial"[87] employment gain. There have been 133 psychologists who have completed the BSCT course and deployed in support of that mission – these individuals, all volunteers, all active duty - were already employed by the military, and upon redeployment, the vast majority returned to their traditional clinical duties. Despite references to "financially-beneficial opportunities," the facts over the past decade directly contradict the Hoffman Report's assertion that the PENS Report would result in "substantial employment" in the area of operational psychology. These data were available to the Hoffman team.

2. The second element of this task requested a review of the Hoffman Report for any significant conflicts of interest that were not acknowledged by any Division 19 member . . . that resulted in any Division 19 members' actions that enabled, contributed to, or supported abusive interrogation techniques and/or contributed to violations of human rights.

Having Dr. Newman serve as an observer on the task force was not unusual in and of itself; as the executive director for the Practice Directorate, the largest directorate within APA, such representation was logical, given the focus on the task force. The relationship between Dr. Newman and COL(R) Dunivin was made known to all APA members. The October 2002 *Monitor on Psychology* contains a photograph of Dr. Newman participating in COL(R) Dunivin's promotion to Lieutenant Colonel, with the accompanying text identifying their marital status.[88] After COL(R) Dunivin was nominated for a seat on the Finance Committee in 2004, a Council member raised an objection to the Board. This objection was based upon concerns that the Finance Committee had oversight over other APA sections, to include the Practice Directorate, for which Dr. Newman served as executive director. After the CEO and legal counsel sought an opinion from PriceWaterhouseCooper**,** the Board did not forbid COL(R) Dunivin from

[85] The Hoffman Report provides no comparative analysis of the proportional growth of psychologists to other healthcare professionals, such as physicians and nurses hired by DoD during this time period.

[86] Personal communication, Psychology Consultants for U.S. Army, U.S. Air Force, and U.S. Navy, September 2015.

[87] Hoffman report, 2 July 2015, p. 40.

[88] APA *Monitor on Psychology*, (2002, October). *33*, 87.

running, requesting only that she submit a plan of how to mitigate those concerns. However, given time constraints coupled with her military assignment, she elected to withdraw her nomination. These facts are evidence that APA leadership was well aware of the relationship between Dr. Newman and COL(R) Dunivin before the PENS Task Force was created. The fact that she was in the military and, at the time of the events under question, serving at Guantanamo, was also well known to the APA president and the entire Board, as evidenced in this same email string.[89] With full awareness of Dr. Newman's relationship with COL(R) Dunivin, to include her military assignment at Guantanamo at the time of the PENS Task Force, the Board asked him to serve as an observer.[90]

COL(R) Dunivin was not a member of the PENS Task Force nor was she present during any of their meetings - a fact that the Hoffman Report obscures - as she was stationed at Guantanamo during this time. Dr. Newman was an observer with no voting rights. In fact, based upon the notes taken by Dr. Arrigo, Dr. Behnke, and Dr. Brandon during the PENS Task Force meetings,[91] It appears that Dr. Newman was a minor contributor to the process, as would be expected of someone with his role. This stands in stark contrast to how the Hoffman Report characterizes Dr. Newman's "forceful" role at the meeting.[92] While the Hoffman Report implies that COL(R) Dunivin's career was dependent upon the outcome, this is, in fact, also untrue. As anyone with an understanding of the military knows, if the outcome of the PENS Task Force would have restricted or even eliminated the role of psychologists in interrogation support, COL(R) Dunivin would have simply been reassigned elsewhere. The report's analysis of the conflict of interest reveals very little knowledge or understanding of how the military, and most consensus panels focused on scientific issues, work.

From another perspective, the conflict of interest identified by the Hoffman Report is even more disturbing. According to the Hoffman Report, APA:

> was in the midst of determining its ethical position on this critical issue. In doing so, APA needed to determine how to balance at least two important values: (i) the importance of psychologists assisting the government in getting accurate intelligence information about

[89] Hoffman Report, 2 July 2015, Binder 5, pp. 1401-1403.

[90] Despite subsequent objections, in an email from Dr. Arrigo to the Chair of the PENS Task Force in reference to observers at the PENS Task Force meeting, Dr. Arrigo stated "I couldn't imagine objecting to any particular person" (PENS listserv 7 June 2005). It is difficult to reconcile this statement from her later objections to Dr. Newman's position as an observer at the PENS Task Force meetings.

[91] Hoffman Report, 2 July 2015, Binder 3.

[92] Ibid., p. 282.

> potential future attacks in order to protect the public; and (ii) the importance of psychologists not intentionally doing physical or psychological harm to individuals, perhaps especially in the situation in which the individual is in custody and is outside the protections of the criminal justice system. In determining its position, APA also needed to balance the views and positions of military and national security psychologists with the views and positions of those outside the military, and national security systems.[93]

The Hoffman Report then states "Because of Dunivin's obvious and strong interest and bias on these points, Newman had a classic conflict of interest."[94] The bias against military psychologists in this passage is unmistakable. The Hoffman Report characterized the situation as either/or: Given that COL(R) Dunivin was a military psychologist - and presumably because she was a BSCT psychologist as well - she must have supported "intentionally doing physical or psychological harm to individuals" in order to gain accurate intelligence information. The Hoffman Report brings forth absolutely no evidence that COL(R) Dunivin viewed gaining accurate intelligence information and respecting human rights as incompatible. This false dichotomy, which the Hoffman team creates, is a window into the deep, unrelenting bias against military psychology that runs throughout the report. There are no data and no facts upon which to conclude that Dr. Newman's participation in the PENS Task Force meetings or the "long distance" influence of COL(R) Dunivin had any deleterious impact on the treatment of any DoD detainee.

3. Provision of Field Guidance: The third element of this task involved a query into whether there is evidence that meaningful field guidance was not provided that resulted in any Division 19 members' actions that enabled, contributed to, or supported abusive interrogation techniques and/or contributed to violations of human rights.

When faced with a situation for which a psychologist lacks knowledge and competence, the APA Ethics Code mandates that he or she seek avenues of study, training, and consultation.[95] When MAJ John Leso arrived at Guantanamo in June 2002, his expectation was that he would be providing clinical treatment. When that role was abruptly changed to that of interrogation support, MAJ Leso actively sought and received, in turn, guidance from senior active duty Army psychologists regarding his activities. This guidance, once initiated, was sustained throughout his deployment. Recognizing that this would be a recurrent issue, COL(R) Banks developed a field course. This course was the precursor for the three-week Behavioral Science Consultation Course and focused upon the legal issues at hand, the APA Ethics

[93] Ibid., pp. 13-14.

[94] Ibid., p. 15.

[95] APA Ethics Code, 2002, Standard 2.01.

Code, and the common psychological responses to capture and detention. TF19 finds that meaningful ethical and supportive field guidance was provided, and substantial efforts were made to standardize this support through training.

As news reports and articles about the detainee abuse were published in 2002, 2003, and 2004, the emails contained in the Hoffman Report's supplemental materials demonstrate that APA leadership began to discuss ethical concerns. Concurrently, there were psychologists from both outside and inside the military who raised similar concerns in their discussions with APA. In response, the DoD developed the BSCT course and formal guidance in the form of the Office of the Surgeon General Memorandum and policies while the APA established the PENS Task Force**.** It is fact that APA and DoD had a shared goal. That goal was not, as was concluded in the Hoffman Report, to allow abusive interrogations to continue. Rather, the shared goal was to ensure that interrogations were conducted in an ethical manner.

b. **Identify any Division 19 practices, processes, or policies that may have directly or indirectly contributed in any way to APA's perceived failure to maintain their own internal checks and balances for how policies regarding ethics and/or the standing up of task forces related to interest areas of importance to Division 19.**

A thorough review of Division 19's governance documents, including the division's bylaws (binding policies) and handbook (non-binding processes),[96] was conducted by TF19. Similar to the current procedures within the larger APA, no official policies were found regarding the nomination of individual members to task forces of the APA or any of its divisions. According to the Division 19 handbook, the president coordinates with the APA central office, responding to requests or inquiries from the Council of Representatives, Board of Directors, Committee on Scientific and Professional Ethics and Conduct, and various task forces, committees, councils, and boards. Historical practice highlights the cooperation of Division 19's EXCOM in responding to such requests and inquiries. As the division's governing body, consisting of officers elected by its members, the EXCOM has traditionally made recommendations to the president. The EXCOM may also determine, via general consensus, whose names should be forwarded to APA governance for participation on task forces. These recommendations are based upon the specific purpose of the task force and the subject matter expertise of the recommended individuals. Unless a "representative of Division 19" is specifically requested, these individuals are selected by merit

[96] Retrieved from http://www.apadivisions.org/division-19/about/bylaws.aspx

of their expertise, and their opinions are not necessarily reflective of the views and opinions of the division.

Division 19's EXCOM naturally recommended members for participation in the PENS Task Force.[97] The recommendations made by Division 19 leadership were, consistent with historical precedent, based upon the individuals' professional expertise. Aside from these recommendations, Division 19 had no additional role in the selection of PENS Task Force members. TF19 finds no evidence that any Division 19 practice, process, or policy inappropriately contributed to, or unduly influenced, APA's decision making regarding the selection of its task force members.

Regarding revisions to APA's 2002 Ethics Code, the Hoffman team concluded in its report that "the meaningful changes occurred prior to 11 September 2001 and were not influenced by an effort to help the government's interrogation efforts."[98] Although it is true that there was a military psychologist on the Ethics Code Task Force, that psychologist had not been selected by, nor was he representing Division 19. Regardless, any suggestion that the outcome of this Ethics Code revision process was a product of collusion between APA and DoD was rendered moot by the timeline. As the Hoffman Report itself points out, all the relevant changes were made to the 2002 Ethics Code prior to the events of 11 September 2001. This fact was known to the Hoffman team at the very beginning of the investigation. It is therefore unclear why the Hoffman team felt it necessary to conduct interviews and include extensive materials in the report regarding allegations related to the 2002 revision to the Ethics Code.

The Hoffman Report also concludes that there is "no evidence to suggest that the failure to discuss the Nuremberg Defense in the context of revisions to Standard 1.02 was in any way connected to the work of psychologists in national security settings or interrogations."[99] While the report goes into great depth regarding the Nuremburg Defense, the Hoffman team fails to note that, during the time in question, the ethical standards for many other national psychological associations, in addressing conflicts between law and ethics, include language very similar to APA's Standard 1.02, as it was adopted in 2002.[100] It is fair to raise a question regarding why the Hoffman team chose to include this lengthy discussion as its

[97] Hoffman Report, 2 July 2015, p. 239.

[98] Ibid., pp. 56-67.

[99] Ibid., p. 57.

[100] International Union of Psychological Sciences, Retrieved from http://www.iupsys.net

only purpose appears to be that of rhetorically establishing the presumption that military psychologists are prone to unethical conduct secondary to the "we were only following orders" defense.

Finally, TF19 found the inclusion of COL(R) James's ethics complaint as a component of the Hoffman Report to be very concerning and, frankly, improper in relation to the APA bylaws as well as the Ethics Committee's "Rules and Procedures."[101] In addition, although the Hoffman Report "found that the handling of ethics complaints against prominent national security psychologists was handled in an improper fashion,"[102] the report subsequently states that "the way in which the Ethics Office handled the James matter was technically permissible under the Rules."[103]

c. **Identify and objectively assess the findings in the Hoffman Report to determine whether and/or how, in any way, the report findings convincingly demonstrate that any Division 19 member contributed to APA not living up to its core values.**

The general findings of the Hoffman Report were the following:

1. Members of the APA colluded with "DoD officials to create and maintain loose APA ethics policies that did not significantly constrain" the DoD or its interrogation program and allowed the continued use of abusive techniques, including sleep deprivation and stress positions.[104]
2. "APA officials intentionally and strategically avoided taking steps to learn information" to confirm suspicions of abusive interrogation tactics.[105]
3. "APA officials engaged in a pattern of secret collaboration with DoD officials to defeat efforts by the APA Council of Representatives to introduce and pass resolutions that would have

[101] APA bylaws: Article XI (Boards and Committees), Section 5: "The work of the Ethics Committee, including information and recommendation on all cases before it, shall be kept confidential, except as provided by the Ethics Committee in rules and procedures approved by the Board of Directors, consistent with the objectives of the Committee and the interest of the Association. APA Ethics Committee Rules and Procedures: Part II General Operating Rules, 3.1 Requirement of Confidentiality: "All information concerning complaints against members shall be confidential, except that the Director may disclose such information when compelled by a valid subpoena, in response to a request from a state or local board or similar entity, 3 when otherwise required by law, or as otherwise provided in these Rules and Procedures. Such information may also be released when the Chair and the Director agree that release of that information is necessary to protect the interests of (a) the complainant or respondent; (b) other investigative or adjudicative bodies; (c) the Association; or (d) members of the public, and release will not unduly interfere with the Association's interest in respecting the legitimate confidentiality interests of participants in the ethics process and its interest in safeguarding the confidentiality of internal peer review deliberation."

[102] Hoffman Report, 2 July 2015, p. 10.

[103] Ibid., p. 59.

[104] Ibid., p. 9.

[105] Ibid., p. 9.

definitely prohibited psychologists participating in interrogations."[106]

4. The APA's "handling of ethics complaints against prominent national security psychologists was handled in an improper fashion."[107]

5. The APA's motive was "to align APA and curry favor with DoD." Secondary motives were creating "a good public-relations response" and "to keep the growth of psychology unrestrained in this area." [108]

Additionally, there were other neutral findings within the Hoffman Report that would not necessitate investigation or further explanation into how Division 19 members were not living up to the APA's core values. Examples of such findings are that there was no evidence that the APA knew about the use of enhanced interrogation techniques[109] and that the revisions of the 2002 Ethics Code "were not influenced by an effort to help the government's interrogation efforts."[110]

The critics are likely to cite ethics complaints against current or past Division 19 members as evidence said member contributed to the compromise of APA core values. Such an assertion is contingent upon the erroneous belief that the mere act of filing an ethics complaint is itself proof of guilt. The standard TF19 used to determine if Division 19 members, by commission or omission, failed to personally live up to APA core values, or caused others to compromise APA core values, was the presence of verifiable evidence that such behaviors actually occurred. To be clear, TF19 did not conduct an investigation but rather relied upon evidence brought forth by the Hoffman Report.

In this regard, TF19 did not find that the Hoffman Report produced any evidence of a substantiated ethics complaints against Division 19 members by APA's Ethics Committee or any state licensing board, with relation to supporting unethical interrogations. In addition, TF19 did not find that the Hoffman Report produced any evidence suggesting that any Division 19 member 1) participated in or encouraged others to participate in torture or cruel, inhuman, or demeaning treatment of detained personnel; 2) engaged in, aided, or condoned falsification of reports or purposeful destruction of records pertinent to the numerous government investigations subsequent to reports of detainee abuse; 3) failed to endorse

[106] Ibid., p. 9.

[107] Ibid., p. 10.

[108] Ibid., p. 71.

[109] Ibid., p. 66.

[110] Ibid., p. 10.

evidenced-based practices as the science became available; 4) did not seek peer consultation and training when faced with the emerging area of psychological support to wartime detainee operations; 5) were remiss in voicing and trying to resolve conflicts between APA's Ethics Code and organizational demands; or 6) secretly brokered or engaged in any quid pro quo arrangements to enable the use of torture or enhanced interrogation techniques.

d. **Identify and objectively assess if any Division 19 member took specific actions, recommended policies and/or contributed to creating a dependence on government influence for APA.**

The Hoffman report defined "dependence on government influence" as a quid pro quo relationship between APA and DoD. Specifically, the Hoffman Report argues that if APA sanctioned the role of psychologists in the abusive interrogations of detainees as "ethical," then APA would benefit in some unidentified manner. Whereas the Hoffman Report does contain a plethora of conjectures and innuendo that suggest nefarious intent by DoD psychologists who worked with APA staff, there is no evidence to support that any identifiable quid pro quo was solicited, offered, or actually occurred – no contract, no promise for employment, no linkage to research monies or discussion of any tangible benefit.[111]

Across the field of psychology, subject matter experts are routinely called upon to determine how the Ethics Code applies to their area of practice wherein their expertise lies. This is exactly what occurred with the PENS Task Force, as a review of both the PENS listserv and notes taken during the PENS Task Force meetings makes clear. The Hoffman Report asserts that APA "colluded" with DoD to ensure that abusive interrogations would continue. This collusion, according to the Hoffman team, was made in lieu of an independent decision. Apparently, the only way that "collusion" could have been prevented was if APA refused to engage with DoD. Mutual collaboration and agreement is not collusion, nor does it foster dependence on one group over another.

To support their allegations of collusion, the Hoffman team would have had to examine the nature and extent of relationships between APA and psychologists in other practice areas where specialty guidelines had been written. To the knowledge of TF19, the Hoffman team did not do so. In addition, the Hoffman team alleges that collusion between APA and DoD occurred after the PENS Report as well. Neither can this allegation cannot stand up to the facts. Resolutions submitted to Council following the

[111] Ibid., pp. 68-6

PENS Report received extensive governance review.[112] The failure of Council to adopt a particular policy is not evidence of collusion but rather is evidence that the sponsors of the policy failed to persuade their colleagues to support it.

In conclusion, there is no evidence in the Hoffman Report or other evidence that TF19 is aware of that any Division 19 member a) served as an intermediary to broker a quid pro quo between APA and DoD; b) was authorized to make promises to APA on behalf of DoD, or c) approached an APA official offering promises that DoD would provide any type of favorable treatment to APA in exchange for any action. There was also no evidence provided by the Hoffman Report to indicate that APA policies were derived from "collusion."

e. **Determine and provide recommendations regarding whether the Hoffman Report findings warrant Division 19 leadership expressing regret and/or apologizing for any division supported, endorsed, or sanctioned behavior and the consequences that ensued.**

TF19 acknowledges that detainee abuse was inflicted by individuals working for the U.S. government. Such abuse is completely counter to the core values of military members, military officers, and military psychologists. TF19 does not discount, in any manner, the abuse that occurred or its significance. However, in the absence of any evidence provided by the Hoffman Report demonstrating that the division or any individual member was complicit in this abuse, the Hoffman Report findings do not warrant Division 19 leadership expressing regret and/or apologizing for any division supported, endorsed, or sanctioned behavior and the consequences that ensued.

f. **Prudently assess the recommendations to the APA's governing Council of Representatives related to the following:**

1. **Consider APA's adoption of a policy prohibiting psychologists from participating in interrogation of persons held in custody by only military and intelligence authorities and how this unduly focuses upon only national security and not law enforcement activities, and the implications pertaining thereto.**

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[112] "Resolution Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment," 9 August 2006, retrieved from http://www.apa.org/about/policy/chapter-3.aspx; **"**Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as 'Enemy Combatants,'" 19 August 2007, retrieved from http://www.apa.org/about/policy/torture.aspx; "Policy Related to Psychologists' Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment," 31 July 2012, retrieved from http://www.apa.org/about/policy/national-security.aspx

One of the approved "Recommended Board Actions Related to the Report of the Independent Review Relating to APA Ethics Guidelines, National Security Interrogations and Torture"[113] is

> *Recommend that Council adopts the following as APA policy: APA prohibits psychologist participation in interrogation of persons held in custody by military/intelligence authorities. Recommend that Council requests that the 2013 Policy Related to Psychologists' Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment be fully implemented (with the amendments proposed in New Business Item 23B).*

An excerpt from New Business Item 23B reads:

> *BE IT FURTHER RESOLVED that, in keeping with Principle A (Beneficence and Nonmaleficence) of the Ethics Code to "take care to do no harm,"[4] psychologists shall not conduct, supervise, be in the presence of, or otherwise assist any national security interrogations for any military or intelligence entities, including private contractors working on their behalf, nor advise on conditions of confinement insofar as these might facilitate such an interrogation. This prohibition does not apply to domestic law enforcement interrogations or detention settings that are unrelated to national security interrogations.*[5]

In the absence of evidence to support the assertion that any DoD psychologist supported or was complicit in abusive military interrogations or inhumane detention operations since APA adopted the PENS Report as Association policy in June 2005, TF19 does not believe that this policy is justifiable. The adoption of this regulation is suggestive of selection bias based upon a political agenda as it focuses only upon military interrogations despite the fact that the U.S. military does not operate outside of U.S. law regardless of geographic location. Finally, while prohibiting a behavior that is felt to be unethical is logical, basing a prohibition upon a location or setting is not. What the August 2015 Resolution has done is prohibit certain psychologists from practicing their work in certain locations under the unsupported assumption that any act that they would perform in that location would be unethical

TF19 is exceptionally concerned about this precedent, one that indicates that APA's only method of dealing with the ethical breaches of a very few is to prohibit all from working in that setting. This action is tantamount to prohibiting all psychologists from having a home office in a psychotherapy practice, because a handful of psychologists engaged in sexual intimacies with their clients in their homes. The Ethics Code applies to all psychologists within the professional organization irrespective of employer, setting, or location. Individual psychologists should and must be held accountable for their behaviors. If

[113] Retrieved from http://www.apa.org/independent-review/recommended-actions-073115.aspx

those professionals working within military and intelligence settings commit ethical violations, then individual and institutional charges and punishments would be the appropriate course of action.

Restricting the scope of practice in this manner is made even more puzzling given President Obama's 15 September 2015 call for the federal government to use behavioral science insights to better serve the American people.[114] The wielding of such power in this manner by a private, voluntary association whose mission is to promote the field of psychology directly contradicts its role in supporting its members in the competent and ethical practice of their profession. The decision is unfathomable, unless it is viewed within the context of the tension between those who believe that the profession is best served through traditional roles - providers and individual clients - and those who view agencies and organizations as their clients**.** In essence, to exclude agencies, organizations, and/or work settings from the receipt of psychological support runs the distinct risk of introducing a litmus test as to what defines psychology, a development that would be a significant concern to Division 19 and possibly other divisions whose members work in the United States and across the world with organizational clients.

TF19 strongly encourages APA through the efforts of a balanced working group to issue "practice guidelines" for psychologists working in national security and military settings in the same tradition as it has promulgated guidelines for other areas of psychological practice where adversarial processes exist and loss of liberty or other high-stakes outcomes exist.

2. **Identify any Division 19 recommendations pertaining to the evaluation and recommend changes to APA ethics processes.**

TF19 strongly encourages APA to consult with Division 19 regarding any proposed revisions to its Ethics Code that pertain to or have the potential to impact the provision of services by military psychologists or that are likely to create or facilitate legal or professional conflicts of interest for military psychologists. Minimally, this may be accomplished through direct consultation with Division 19's president or a representative appointed by Division 19's EXCOM. Consultation with subject matter experts before and during the process of developing or revising Association policies, guidelines, or doctrine is consistent with professionally responsible practice. By virtue of its mission statement, its members' expertise, and its historical importance as a founding division of the APA, Division 19 is in a unique position to provide vital insight, guidance, and support to APA leadership, committees, and task forces on issues pertaining to topics of relevance to the field of military psychology.

[114] Retrieved from https://www.federalregister.gov/articles/2015/09/18/2015-23630/using-behavioral-science-insights-to-better-serve-the-american-people

By example, military psychologists must practice under additional laws, regulations, and guidelines beyond those imposed by the APA and their state of licensure, such as the UCMJ. Failing to consult with military psychologists in advance of implementing policy changes puts members at risk of being simultaneously held to conflicting legal doctrines. Relatedly, the recommended inclusion of international laws and regulations into the APA Ethics Code and/or other policies adds an additional layer of legal complexity not only for military psychologists but potentially for all psychologists employed by a government entity or by any organization funded by government dollars.

3. **Review existing Division 19 bylaws and policies to ensure they are anchored in APA core values, including promoting human rights, human welfare, and ethics.**

Bylaws, as would be expected, focus on procedures, leadership, and financial management. Division 19 bylaws advocate the advancement of psychology as a means of promoting human welfare. While support to human rights and ethics is not explicitly stated in the bylaws or procedures, TF19 did not find any that were contradictory to those same values. In reviewing the mission statements and bylaws of the other divisions within APA, we found that, in general, the bylaws of other APA divisions mirror the bylaws of their parent organization. Only five other divisions - Society for the Psychology of Aesthetics, Creativity, and the Arts (10); Society for Industrial and Organizational Psychology (14); Society for the History of Psychology (26); Society for Addiction Psychology (50); International Psychology (52); and Trauma Psychology (56) - specifically identify the promotion of human welfare within their mission statements and/or bylaws.

4. **Develop language appropriate for Division 19 leadership endorsement to once again express and affirm our commitment to opposing acts of torture and cruel, inhuman, or degrading treatment or punishment in all settings.**

TF19 does not recommend any additions, deletions, or modifications to Division 19's established position on this matter, finding this stance to be unequivocal in tone and intent.

The position of the Society for Military Psychology has been and continues to be that

- Division 19 has always fully supported APA's positions prohibiting torture;
- Division 19 fully supports the Geneva Conventions as well as the U.N. Convention Against Torture, to which the United States is a signatory;
- Division 19 expects all psychologists to adhere to the letter and spirit of the APA Ethics Code; and
- Division 19 expects all psychologists to report Ethics Code violations to the APA Ethics Committee.

5. **Increase Division 19 membership awareness for the APA's increased engagement around human rights activities in collaboration with other organizations.**

As one of the founding divisions of APA, Division 19 endeavors to facilitate its members' access to information of importance to our parent organization, to include the growing emphasis around human rights activities. Most recently in its history, the division has actively utilized its growing social media presence to share information and announcements from APA's various electronic mediums and publications. TF19 recommends that Division 19 continue to facilitate this access to news, announcements, and other information from APA via its various communication channels. Given Division 19's emphasis on "engaging and educating our profession and the society we serve," TF19 also recommends that the division seek opportunities to engage with APA divisions and organizations outside of APA regarding these critical issues. In many ways, the military is a microcosm of our society and, as such, a community very much invested in protecting fundamental human rights.

6. **Evaluate existing conflict-of-interest policies regarding financial, policy or relationship-based conflicts to ensure the policies are understood and followed by Division 19 members and officers.**

The Division 19 bylaws do not specifically address conflict of interest so, by default, the division relies upon the APA's Ethical Standard 3.06 (Conflict of Interest) to delineate where objectivity, competence, or effectiveness can be impaired or relationships exploited. As noted on the APA website, the Council Leadership Team is already working to convene a group to clarify and strengthen the process and content of APA's governance policy on conflicts of interest. It is recommended that Division 19 monitor future guidance on this issue and disseminate findings and/or actions to its members.

7. **Provide recommendations for the adoption of clear procedures within the division for appointing and/or recommending Division 19 members to APA task forces and committees.**

Clearly, individuals nominated for participation in APA task forces and committees should have the requisite expertise and experience. It is also recognized that our students and early career psychologists bring valuable perspectives that should be considered as well. It is recommended that the EXCOM appoint a working group to identify the best practices to achieve this task, with a focus upon identifying best qualified candidates, the process by which to ensure diversity across the spectrum and the specific procedures to be followed.

g. **Explore the development of Division 19 mechanisms for mentoring and development of ethics training.**

As has been underscored throughout this report, the development of mentorship and ethics training is a critical task for all divisions. For Division 19, TF19 recommends a multi-pronged approach utilizing current technologies in order to broaden dissemination, ensure ongoing discussion, and reduce financial cost. A fifth seat on the Division 19's program committee should be established, with the specific task of coordinating and disseminating the issues related to ethics mentorship and training.

It is recommended that consideration be given to adding an ethics break-out session during the annual convention. The use of case examples in a small group format, one consisting of students, early career psychologists, and senior psychologists, would allow for mentorship during discussions involving challenging ethical dilemmas - both those common throughout the field as well as those unique to military psychologists. Summaries from those discussions could be posted to the Division 19 website and/or included in the Division 19 newsletter which would help ensure widespread dissemination. It is also recommended that thought be given to inviting other APA divisions who share interests and/scope of practice - Society of Consulting Psychology (13); Society of Counseling Psychology (17); Psychologists in Public Service (18); Society for Neuropsychology (40); Society for the Study of Peace, Conflict, and Violence (48); and Trauma Psychology (56) - to participate in joint presentations and workshops, allowing for thoughtful and open discussion. Such an approach would allow for shared consultation and collaboration to advance the profession.

Outside of the annual convention, the use of live chat and other forms of social media resources should be explored, with the goal of linking students and early career psychologists with senior psychologists for continual mentorship. A recent addition to Division 19's list of resources is the Adobe Connect live chat and virtual conference program, which provides an opportunity for periodic ethics presentations or workshops while also allowing ongoing mentorship. Finally, TF19 recommends the addition of a dedicated section within the Division 19 newsletter and/or regular emails to all Division 19 members that could be used to summarize relevant books, articles, and continuing education opportunities.

h. **Provide recommendations for Division 19 to endorse and help ensure that all of APA's relevant policies are anchored in APA's core values, including promoting human rights, human health and welfare, and ethics.**

The diversity of APA's divisions is its strength, and one would be hard pressed to find a division that is more diverse than Division 19. As practitioners, researchers, academics, and consultants, the pursuit of

excellence and ethical action is grounded in our synergy and adherence to scientific principles. The lack of knowledge regarding military practices, structure, and culture by the larger APA community is understandable – only 1% of the current American population has served in uniform. To that end, it is recommended that Division 19 increase its interaction and involvement throughout APA to address any misconceptions, reduce barriers to communication, increase sensitivities to each other's equities, and bolster collaboration in areas of mutual interest.

General Observations

TF19 was afforded neither the luxury of nearly eight months to develop these findings nor the largesse that comes with a $4,000,000 check[115] to support our work. What we did bring to the table was a deep resolve to address the charges presented in the Hoffman Report in a data-based review with recognition of the importance of scientific principles and processes. While we believe we were successful in this mission, the readers of this document are left to form their own conclusion.

We were struck by several themes that ran throughout the report. General Principle E of the 2002 APA Ethics Code, states in part "psychologists try to eliminate the effect on their work of biases based upon these factors . . ." [referencing culture, individual and role differences]. However, the lack of understanding displayed by the Hoffman team with respect to military culture, practices, standards and policies was a clear, contributory factor in the report's misunderstandings, mischaracterizations, and faulty conclusions. While the infliction of torture appropriately evokes a strong and visceral response for us all, as it must, the persistent linkage of that abhorrent behavior with military interrogations falsely assumed and erroneously portrayed operational psychologists as being unconcerned for human rights. The acceptance of torture is deeply inconsistent with the ethics and values inherent in military service, as was eloquently stated by MAJ Hoepner in August 2003, whom the Hoffman team approvingly quoted: "We are American soldiers, heirs of a long tradition of staying on the high ground."[116]

This investigation appears to have been launched on the following simplistic formula: Bad things happened; bad actors, psychologists in DoD working with APA staff, sought to ensure that bad things could continue to happen; there remained "a substantial risk" that bad things would continue to happen because of "loose" ethical guidelines; and APA turned a blind eye because it wished to curry favor with

[115] As of 27 October 2015, the total amount billed by Sidley Austin was $4,135,255, with the total for all independent review costs to date, $4,989,377. This figure represents approximately 8% of APA's financial reserves.

[116] Hoffman Report, 2 July 2015, p. 71.

DoD. The first element in the equation is fact - there were instances of abuse and torture in the early years of the war. However, when one takes an informed and objective look at the timeline, one that involves DoD's responses to the events at Guantanamo and Abu Ghraib, as well as the proactive actions of DoD psychologists and several APA leaders, the rest of the equation falls apart. While it is critical to acknowledge when psychologists engage in unethical behavior and respond appropriately, it is equally important to acknowledge when psychologists hold fast to their core values, even when such acknowledgment may be difficult in the face of severe criticism.

But the onus for this outcome does not rest on the shoulders of the Hoffman team alone. They were, in fact, hired to do a job by a small number of APA leaders. From an organizational standpoint, by Spring 2015 the project was well over budget. The Board's initial budget for this effort was between $400,000 and $800,000. The document was later than originally anticipated; the initial report, scheduled to be completed by the end of March 2015, was finally submitted to the Board on 27 June 2015,[117] prodded, it appears, by factors identified in the Hoffman Report's very first footnote,[118] in which it was acknowledged the Special Committee had voiced a "very strong preference" that the report be available prior to the August 2015 annual convention. The delay in fully completing the investigation was due, at least in part, to the Special Committee's decision to expand the scope of the original questions to include "a review of the issues specifically identified in the Board's statement, the relevant issues in Risen's book, and the critics' allegations regarding the changes in APA policies and the driving forces behind those changes."[119] The scope of the review was broadened in order to achieve a "full understanding of what happened and why" - an expectation that clearly was not met.

As any psychologist versed in assessment knows, the way a question is phrased has significant impact on the answers that are found; by the time the investigation started in earnest, there was a substantial risk that the investigation was not one in which an exploration of the facts would occur; rather it was one in which "facts" would be sought to support a predetermined set of conclusions based on many incorrect assumptions and inferences for which no credible foundation had been established. In establishing the parameters for the investigation, the Hoffman team was encouraged to spend substantial time with the critics prior to conducting the team's work, a decision that many psychologists would view as questionable in the conduct of an "independent, objective" investigation. It is difficult to imagine that

[117] Retrieved from http://www.apa.org/monitor/2015/09/cover-policy.aspx

[118] Hoffman Report, 2 July 2015, p. 21.

[119] Ibid., p. 64.

any competent, experienced forensic psychologist would have proceeded with such an instruction in a custody evaluation, for example, given the importance both to appear, and to be, neutral with regard to the parties and the relevant allegations. Certainly, all voices needed to be heard, but the approach taken by Mr. Hoffman is consistent with what would be expected from a prosecutor accustomed to establishing the best case for his client (the state), rather than engaging in a deliberate, balanced, thorough investigation to establish the truth, as a judge would do.

Numerous individuals who were interviewed by the Hoffman team have reported that what they said was significantly mischaracterized or reported flat-out wrong. For example, the mischaracterization of Col(Ret) Kleinman's statements, which were deleted only after Col(Ret) Kleinman's attorney contacted Mr. Hoffman, raises legitimate concerns about the validity of the comments made in other interviews. This concern is especially pressing for Interviews with individuals who were most likely to provide evidence and opinions contrary to the Hoffman Report's central conclusions.

The Hoffman Report is filled with examples of the Hoffman team shaping the data to fit its conclusions, rather than allowing the data to speak for themselves. This feature of the Hoffman Report, coupled with, among other features, incorrect facts, directly contradicts the Hoffman team's promise to "go where the evidence would lead."[120] Political differences will always exist; the profession of psychology is diminished when the politics drive the science, rather than science informing the politics.

We are deeply disappointed that this investigative process had no mechanism for an adequate opportunity to respond nor any time allowed for the mistakes and mischaracterizations included in the report to be brought forth, discussed, and corrected prior the report's public release. No one interviewed in the process of the investigation has yet been afforded the opportunity to review the source material used by the Hoffman team for accuracy, nor was anyone named in the report sent a draft prior to the report's release in order to meet with the Board to correct mistakes and affirm or disagree with the findings. Critics of APA, however, were allowed access to the Hoffman Report even before Council was given access. While the report's leak to the *New York Times* expedited the process of making the report public, as far as TF19 can determine, the Special Committee never had created a timeline or a process by which people named in the report would have an opportunity to respond before the report's public dissemination. Apparently, only after Council members named in the report requested an avenue by which to respond, did the Board create a venue on the APA website – many days after the report appeared in the *New York Times*.

[120] Ibid., p. 8.

The Special Committee accepted the report without the slightest indication that the findings were anything less than correct. People were fired or "encouraged to retire," with careers spent in long service to APA or DoD left in tatters. It is difficult to understand why the clarion call to "do no harm" did not apply to all.

Shaping of the response to the Hoffman Report was immediate – the intensity of the affect overwhelmed clarity of thought. Immediately following adoption of the Resolution, the chair of the Special Committee wrote about "the tears" of those on Council and the Council dais. Two days later, those entering the town hall meeting were greeted by two large screens with affect-laden, negatively charged words and phrases describing reactions to the report. These events occurred after the Board had been put on notice that there were serious flaws in the Hoffman Report.

The allegations leveled against the PENS Task Force in the Hoffman Report - the lack of transparency, the rush to adopt policy without considered judgment, conflicts of interest, communications intentionally kept from APA's highest governing body, the failure to abide by relevant APA policy, and the preoccupation with how APA would appear in the media - were apparently mirrored by the very responses of the Special Committee to the Hoffman Report.

While TF19 found no basis for an apology from Division 19 leadership for any actions of the division or its members, the same cannot be said for APA. The Special Committee did not establish an adequate opportunity for those named in the report to defend themselves, setting the stage for potentially protracted litigation; substituted politics for leadership in a time of high emotion; allowed misinformation to be disseminated on APA listservs to members without any apparent oversight by APA, fueling the subsequent rush to judgment against individuals named in the report; and created fissures within the discipline of psychology that threaten to fracture the community. Nearly four months after APA adopted the 2015 Resolution, the organization appears to have very little understanding of the Resolution's implications. Today, more than ever, psychologists need to return to the core of APA as a professional organization dedicated to advancing psychology as a science, a field dedicated to the pursuit of excellence, knowledge, diversity, and ethical action.

The Hoffman Report got it wrong.

If Mr. Hoffman had followed the evidence – as he had promised to do – the efforts of military psychologists and APA staff to end detainee abuse would have been appropriately recognized. Instead, readers are left to believe that all military interrogations equate to torture, operational psychologists

are devoid of ethics, and APA is an ineffectual organization that does the bidding of external agencies. The Hoffman Report and APA's response have irreparably damaged the reputations and livelihoods of dedicated professionals who did not see a dichotomy between professional ethics and patriotic duty at a time of national crisis, and who viewed gaining accurate information to prevent acts of violence and respecting human rights as entirely compatible.

APA now faces the largest challenge of its history.

Appendix A

Division 19, Society for Military Psychology

Terms of Reference

14 July 2015

Hoffman Report: Actions, Lessons Learned, and Way Ahead

General Objective

Identify science, practice, and membership implications and opportunities, as well as policy and process improvements that Division 19 should adopt as a result of the APA Hoffman Report.

Background

The APA Board of Directors responded to ongoing critics of its processes by retaining the services of attorney David Hoffman of the Sidley Austin law firm this past November. The APA asked Mr. Hoffman to conduct a thorough and independent review of the alleged relationship between various activities of the APA and Bush Administration policies on interrogation techniques. According to the APA website, the Hoffman report states that the intent and motivation for the individuals who participated in actions related to the PENS report, which was described as "collusion," was their efforts to "curry favor" with the Defense Department. The report alleges this "may have enabled the government's use of abusive interrogation techniques." According the Hoffman report and the APA website, this resulted in the 2005 PENS report becoming a "document based at least as much on the desires of the DoD as on the needs of the psychology profession and the APA's commitment to human rights."

We have addressed our concerns in a letter forwarded to our membership. My letter expresses disappointment in the perceived lack of complete objectivity in the report and calls for the establishment of a senior panel of members of our division to carefully evaluate and explore these issues and opportunities.

Specific Tasking

a. Carefully review the Hoffman report to identify and document any objective evidence of "collusion;" any significant conflicts of interests that were not acknowledged by any Division 19 member, and whether there is evidence that meaningful field guidance was not provided that resulted in any Division 19 members' actions that enabled, contributed to or supported abusive interrogation techniques, and/or contributed to violations of human rights.
b. Identify any Division 19 practices, processes, or policies that may have directly or indirectly contributed in any way to APA's perceived failure to maintain their own internal checks and balances for how policies regarding ethics and/or the standing up of task forces related to interest areas of importance to Division 19.
c. Identify and objectively assess the findings in the Hoffman report to determine whether and/or how, in any way, the report findings convincingly demonstrate that any Division 19 member contributed to APA not living up to its core values.

d. Identify and objectively assess if any Division 19 member took specific actions, recommended policies, and/or contributed to creating a dependence on government influence for APA.
e. Determine and provide recommendations regarding whether the Hoffman report findings warrant Division 19 leadership expressing regret and/or apologizing for any division supported, endorsed, or sanctioned behavior and the consequences that ensued.
f. Prudently assess the recommendations to the APA's governing Council of Representatives related to:

    - Consider APA's adoption of a policy prohibiting psychologists from participating in interrogation of persons held in custody by only military and intelligence authorities and how this unduly focuses only national security and not law enforcement activities, and the implications pertaining thereto.
    - Identify any Division 19 recommendations pertaining to the evaluation and recommend changes to APA ethics processes.
    - Review existing Division 19 bylaws and policies to ensure they are anchored in anchored in APA core values, including promoting human rights, human welfare and ethics.
    - Develop language appropriate for Division 19 leadership endorsement to once again express and affirm our commitment to the opposing acts of torture and cruel, inhuman, or degrading treatment or punishment in all settings.
    - Increase Division 19 membership awareness for the APA's increased engagement around human rights activities in collaboration with other organizations.
    - Evaluate existing conflict-of-interest policies regarding financial, policy, or relationship based conflicts to ensure the policies are understood and followed by Division 19 members and officers.
    - Provide recommendations for the adoption of clear procedures within for appointing and/or recommending Division 19 members to APA Task Forces and Commissions.

g. Explore the development of Division 19 mechanisms for mentoring and development of ethics training as components of our annual convention programming.
h. Provide recommendations for Division 19 to endorse and help ensure that all of APA's relevant policies are anchored in APA core values, including promoting human rights, human health and welfare, and ethics.

Appendix B

Division 19 Members Named in or Interviewed for the Hoffman Report

Arrigo, Jean-Marie

Banks, Morgan

Crow, Bruce

Bartone, Paul

Dunivin, Debra

Grill, Dennis

James, Larry

Knapp, Deirdre

Laurence, Janice

Matarazzo, Joseph

Nichols, Robert

Roland, Robert

Sammons, Morgan

Seligman, Martin

Sternberg, Robert

Strickland, William

Williams, Tom

Appendix C

Investigations Regarding Detainee Operations, Detainee Treatment, and Interrogation Techniques: 2003-2005

Investigations Pertaining to Detention Operations and Interrogation Techniques 15-6 Investigation of the 800th Military Police Brigade (MG Antonio M. Taguba), 9 March 2003

Assessment of DoD Counter-Terrorism Interrogation and Detention Operations in Iraq (MG Geoffrey D. Miller), 9 September 2003

Assessment of Detention and Corrections Operations in Iraq, (MG Donald J. Ryder), 6 November 2003

Inspection of Detainee Operations and Facilities in Afghanistan (MG Charles H. Jacoby), 26 June 2004

Department of the Army Inspector General Assessment of Detainee Operations in Afghanistan and Iraq, 21 July 2004

15-6 Investigation of the Abu Ghraib Detention Facility and the 205th Military Intelligence Brigade (LTC Anthony R. Jones and MG George L. Fay), 6 August 2004

Independent Panel to Review DoD Detention Operations (The Honorable James R. Schlesinger, Chairman), 24 August 2004

15-6 Investigation of Combined Special Joint Operations Task Force on Detainee Operations (BG Richard P. Formica), 8 November 2004

Review of DoD Detention Operations and Detainee Interrogation Techniques (VADM Albert T. Church, III), 7 March 2005

15-6 Investigation regarding FBI Allegations of Detainee Abuse at GTMO (LTG Randall M. Schmidt and BG John T. Furlow), 1 April 2005

Assessment of Detainee Medical Operations for OEF (Operation Enduring Freedom), GTMO (Guantanamo), and OIF (Operation Iraqi Freedom) (MG Lester Martinez-Lopez, Commander of U.S. Medical Research and Material Command), 13 April 2005

Hoffman's Key Conclusion Demonstrably False: The Omission of Key Documents and Facts Distorts the Truth

Colonel (Ret.) L. Morgan Banks
Colonel (Ret.) Debra L. Dunivin
Colonel (Ret.) Larry C. James
Dr. Russ Newman

October 2015

Hoffman's Key Conclusion Demonstrably False:
The Omission of Key Documents and Facts Distorts the Truth

Based upon documents described in this response, we can now demonstrate the following:

Despite eight months of research and more than $4.1 million in fees, Mr. Hoffman's report omits the key Department of Defense documents that governed military interrogations in the period leading up to the PENS report. Only that omission enables him to make the false claims at the core of his major conclusion: that DoD guidelines did not prohibit abusive interrogation techniques and that we wanted the PENS guidelines to be similarly "loose." In fact, the DoD policies – some of which we helped to draft – were very restrictive. Moreover, the PENS report clearly states that psychologists are bound by those policies as well as by the relevant international treaties.

In the face of the documents Mr. Hoffman ignored, his major conclusion collapses. As this response will also demonstrate, that omission is part of a pattern of omissions, factual mistakes, and unsupported inferences that pervade the rest of his report.

Background

In November 2014, the Board of Directors of the American Psychological Association (APA) engaged David H. Hoffman, a partner in the law firm of Sidley Austin, to conduct an independent investigation of the process leading up to the report issued by the APA's Presidential Task Force on Ethics and National Security (PENS) that provided guidelines for psychologists involved in interrogations. Mr. Hoffman delivered his report on June 27, 2015. It was accepted immediately and uncritically by the APA, and those attacked in it were given no meaningful opportunity to reply before the APA Board and Council acted on it, and its conclusions were reported in the *New York Times*. As we said in our initial response on July 31, even a superficial reading of the report shows that it is written as a prosecutorial brief, not an objective review of the facts. At that time, we promised further, fact-based responses. This is the first such response, issued on behalf of the following individuals named in the report: Colonels (Ret.) L. Morgan Banks, Debra L. Dunivin and Larry C. James, and Dr. Russ Newman (APA Executive Director for Professional Practice until December 31, 2007).

Our findings

The documents Mr. Hoffman omitted clearly show that, prior to the work of the PENS Task Force in late June of 2005, restrictive DoD interrogation policies were already in place prohibiting the abusive interrogation tactics, including sleep deprivation and stress positions, that the Hoffman report erroneously claims we colluded to enable. It is only by omitting a meaningful analysis of these documents that he is able to:

- Claim incorrectly that the DoD interrogation policies in place at the time of PENS relied on "high-level concepts and did not prohibit techniques such as stress positions and sleep deprivation…."[1]
- Claim incorrectly that we and others had motives to keep the PENS guidelines "loose" so that they would not constrain abusive interrogations. That claim is nonsensical in the face of the restrictive military policies issued in 2004 and early 2005, some of which we participated in creating.

These policies – not the earlier guidelines and outdated Bush-administration policies on which Mr. Hoffman relies – provide the critical context for the PENS report. And, in fact, language was inserted into the PENS guidelines to make it clear that military psychologists were bound by these most recent policies, as well as by the U.N. Convention Against Torture and the Geneva Conventions governing the treatment of prisoners of war. (See pages 13-14 for the facts that support this statement.)

In the coming weeks, we will demonstrate that the report's other major findings rest similarly on omissions and factual errors, as well as mischaracterizations and unsupported inferences. The result is a story that, while plausible to those not involved in the events it describes, turns truth on its head. The consequence has been to wreak irreparable damage upon our reputations and our careers and, more importantly and shamefully, upon the reputation of the APA and our profession. All this has happened without the APA having given us the opportunity to state our case to its Board or Council.

Far from enabling abusive interrogations, those of us in the military were working successfully to put in place the restrictive policies that ended the abuses. We outline those efforts on page 11 and will provide more details about them in our more comprehensive response.

That full response will take more time given not only the length of Mr. Hoffman's report, but also the volume of key documents and facts that it omits and that we have had to gather ourselves.[2] For the time being, we list several of the most obvious errors at the end of this response.

We believe objective observers, once they review all of the documents and facts, not only those Mr. Hoffman chooses to present, will conclude that his report's conclusions are profoundly wrong. The report's omissions, factual errors and mischaracterizations are difficult to attribute to anything other than a prosecutorial zeal to reach a pre-ordained conclusion, the conclusion reached by those whose attacks he describes on the report's first page. We have tried not to let our outrage infect the tone of this response. But we find it reprehensible that any reputable law firm would issue such a deeply misleading report, and that the APA would rush to accept and thereby sanction the report without carefully reviewing it and giving those attacked a chance to respond.

[1] Hoffman report, page 12; pdf page 27.

[2] As we have stated previously, our investigation has been hampered by lack of access to Mr. Hoffman's notes and the emails, and other documents provided to him by the APA, or others, that he did not include in his document binders. Given the pattern of omissions in the report, and our knowledge that the report does not reflect the full content of at least some interviews, those notes gain added importance. The APA, through its counsel, refused our request; Mr. Hoffman has not had the courtesy even to respond to a request made by Dr. Newman for those materials on August, 27, 2015.

THE FACTS: AN EXECUTIVE SUMMARY

1. The report's central conclusion is that APA officials *"colluded with important DoD officials to have APA issue loose, high-level ethical guidelines that did not constrain DoD in any greater fashion than existing DoD interrogation guidelines*."[3] The DoD guidelines, the report claims, "*used high-level concepts and did not prohibit techniques such as stress positions and sleep deprivation…."*[4]

The facts: As the documents Mr. Hoffman omitted show, the DoD interrogation policies in effect in June 2005, when the PENS report was created, were very restrictive. For example, the Standard Operating Procedures (SOP) for Iraq issued on January 27, 2005, specifically prohibited sleep management and stress positions, among several other techniques. The policies also incorporated the provisions of the relevant Geneva Conventions. ***Mr. Hoffman's report never refers to these restrictive DoD policies*.** Given these policies, the claim that we wanted loose APA guidelines so that DoD could continue abusive interrogations simply makes no sense, especially given that those of us in the military were involved in creating some of these military guidelines.

2. The report also concludes that *"there remained a substantial risk, that without strict constraints, such abusive interrogation techniques would continue"* and that we and others exhibited *"substantial indifference to the actual facts regarding the potential for ongoing abusive interrogations techniques."*[5]

The facts: As the documents we cite demonstrate, by the time of the PENS report all evidence showed that abusive interrogations within DoD had ended and were highly unlikely to resume, given the prohibitions against them and the penalties for violating those prohibitions.[6] Here as elsewhere, Mr. Hoffman conflates times periods in order to ignore the major changes in interrogation policies and practices that took place in 2004, after the Office of Legal Counsel (OLC) memos that provided an expanded view of permissible interrogation techniques were withdrawn.

3. Mr. Hoffman concludes that the PENS guidelines were unduly loose in a way that did not constrain abusive interrogations. In particular, he makes two claims. Although those claims lose their force given the restrictive military guidelines already in place, they are in themselves false.

The first claim:

The leading ethical constraint in the report was that psychologists could not be involved in any way in torture or cruel, inhuman or degrading treatment. But it was well known to APA officials at the time of the report that the Bush Administration had defined "torture" in a very narrow fashion,

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[3] Hoffman report, page 9, pdf page 24.
[4] Hoffman report, page 12, pdf page 27.
[5] Hoffman report, page 9, pdf page 24.
[6] Our response relates only to DoD; we cannot speak to policies or practices within the Central Intelligence Agency (CIA) or to the activities of Dr. James Mitchell and Dr. Bruce Jessen, whose company contracted with the CIA to conduct interrogations. **We note, however, that the Hoffman report regularly ignores the clear difference between the approaches of the DoD and the CIA that had developed in late 2003, 2004 and 2005.** DoD was governed by its own policies which, by that time, clearly did not authorize abusive techniques. We note that Mr. Hoffman states that Dr. Mitchell told him (emphasis added)***: "DoD was genuinely interested in adhering to the Ethics Code and was seeking clarity about its guidelines, whereas the CIA would not have changed its operational decisions based on the ethical statements of a professional association."*** Hoffman report, page 144, pdf page 162.

and was using the word "humane" to describe its treatment of detainees despite the clear indications that abusive interrogation techniques had been approved and used. Thus, APA knew that the mere use of words like "torture," "inhuman," or "degrading" was not sufficient to provide guidance or draw any sort of meaningful line under the circumstances.[7]

The facts: The Bush Administration memos providing a narrow definition of torture had been withdrawn by the time of PENS insofar as they applied to the DoD. As a report of the Office of Professional Responsibility (OPR) made clear, as of December of 2003 the "Yoo memo" underpinning an expansive view of permissible DoD interrogation techniques was verbally withdrawn.[8] At some point after Deputy Attorney General Patrick Philbin testified before the House Permanent Select Committee on Intelligence on July 14, 2004, the DoD informed the OLC that it did not need a replacement for the Yoo memo.[9] The verbal withdrawal of the Yoo memo in December of 2003 was then reiterated in writing in February of 2005.[10] The more general OLC "Bybee memo" giving an expanded view of permissible interrogation techniques was withdrawn in June of 2004, and the OLC memo issued in December 2004 made it very clear that torture would be defined with reference to the United Nations Convention Against Torture (CAT) as well as U.S. law.[11] (A second, classified Bybee memo applied to the CIA and was replaced by memos in May of 2005 that were also specific to the CIA.) Mr. Hoffman's conclusion rests on ignoring developments in 2004 and 2005 and the distinction between CIA and DoD policies.[12]

The second claim:

Mr. Hoffman concludes that the PENS guidelines did not require adherence to the Geneva Conventions. His language also clearly implies that we were unconcerned with the Conventions.

Although the relatively small number of non-DoD voting members of the task force made some efforts to push for greater specificity and for definitions based on the Geneva Conventions, their efforts were rejected by the DoD members of the task force, the APA Ethics Director, and the other key APA officials who were included in the meeting.[13]

… the PENS report does not fully embrace international legal standards.[14]

The [PENS] statement also makes reference to, at Wessells's behest, the Geneva Convention Relative to the Treatment of Prisoners of War and the U.N. Convention Against Torture. But as discussed earlier, these provisions are not made binding on psychologists in these detainee settings. [15]

The facts: As we demonstrate below in section 3, the actual language of PENS guidelines made it clear that U.S. law incorporates all treaties to which the U.S. is a party, including the CAT. It also makes clear that psychologists must "follow" the most recent applicable regulations, and that those regulations

[7] Hoffman report, page 12, pdf page 27.
[8] Office of Professional Responsibility Report, page 112, pdf page 118.
[9] Office of Professional Responsibility Report, page 121, pdf page 127.
[10] Levin Memo, February 4, 2005.
[11] Levin Memo, December 30, 2004.
[12] **Mr. Hoffman did not find that APA officials colluded with the CIA**. Hoffman report, page 10, pdf page 25.
[13] Hoffman report, page 12, pdf page 27.
[14] Hoffman report, page 251, pdf page 270.
[15] Hoffman report, page 305, pdf page 324.

incorporate the Geneva Conventions and the CAT. (The PENS Task Force Report even contained links to those texts.[16]) As DoD psychologists were aware and as we discuss in Section I below, the regulations governing DoD interrogations had become tight, not loose.

In the face of the actual PENS language, it is difficult to see any basis for Mr. Hoffman's characterization of the report. The PENS guidelines could be considered "loose" only by those who wanted policy outcomes – for example, that psychologists should have no involvement in interrogations – that the Board of Directors and the PENS Task Force as a whole did not accept, or wanted a degree of specificity about which there was no consensus and which ethical guidelines in other professions do not attempt.[17]

In the following pages, we provide supporting details for each of these three points. In the concluding pages, we describe some of the report's many other factual inaccuracies and mischaracterizations.

THE FACTS: THE SPECIFICS

1. Mr. Hoffman's Central Conclusion Collapses in the Face of the Timeline of Events Pre-PENS

Hoffman states as fact the following conclusion (emphases added):

> Our investigation determined that key APA officials, principally the APA Ethics Director joined and supported at times by other APA officials, colluded with important DoD officials to have APA **issue loose, high-level ethical guidelines** that did not constrain DoD in any greater fashion **than existing DoD interrogation guidelines**.… Thus, we conclude that in colluding with DoD officials, APA officials acted (i) to support the implementation by DoD of the interrogation techniques that DoD wanted to implement without substantial constraints from APA; and (ii) with knowledge that there likely had been abusive interrogation techniques used **and that there remained a substantial risk, that without strict constraints, such abusive interrogation techniques would continue; and (iii) with substantial indifference to the actual facts regarding the potential for ongoing abusive interrogations techniques**.[18]

This conclusion rests on the assumption, for which Mr. Hoffman provides no facts, that at the time of the PENS report the existing DoD interrogation guidelines allowed for abusive interrogations. They did not.

[16] Dr. Mike Wessells, PENS listserv notes, page 91. The day after the PENS Task Force meeting, Dr. Wessells states: "One very small but important suggested change is that yesterday, we had agreed to include under the fourth point reference (in two places) to both the Geneva Conventions and the Convention Against Torture (which applies to detainees who are not Prisoners of War)." And in fact, those references are included in the final text of the report. Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security (PENS), June 2005, page 5, pdf page 6.

[17] For example, the American Bar Association Model Rules of Professional Conduct state: "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent…" The ethics code doesn't list all the specific ways that an attorney should not assist a client in committing a crime or fraud.

[18] Hoffman report, page 9, pdf page 24.

He states essentially the same conclusion on pages 65 and 68. He further states:

> During the task force's pre-meeting communications, during its three-day meetings, and in preparing the task force report, Behnke [Dr. Stephen Behnke, the APA Ethics Director at the time of PENS] and Banks closely collaborated to emphasize points **that followed then-existing DoD guidance (which used high-level concepts and did not prohibit techniques such as stress positions and sleep deprivation)**, to suppress contrary points, and to keep the task force's ethical statements at a very general level in order to avoid creating additional constraints on DoD.[19]

Although Mr. Hoffman refers to "existing interrogation" policies and guidelines, he ***never*** provides the actual DoD policies that were in place as of June 2005 when the PENS Task Force convened. Instead, he refers to DoD policies in place in 2002, 2003, and late 2004, or to CIA policies. (The late 2004 document is a SOP for BSCTs[20] at Guantanamo that was replaced on March 28, 2005, by a SOP that Colonel Dunivin drafted. That later document is actually included in the report's document binders but not listed in their index or referred to in the report.)[21]

Here as in many other places, the Hoffman report relies on both omissions and misstatements to reach its conclusions. **As the documents we describe and attach to this response demonstrate, Mr. Hoffman's main conclusion is false.**

The Documentation Mr. Hoffman Didn't Provide or Analyze

As the documents demonstrate, military personnel were under clear orders to treat detainees humanely. This had manifested in a number of policies prohibiting abusive interrogations and defining abuse quite specifically. The policies in place incorporated the relevant Geneva Conventions as well as the provisions of the Army Field Manual (FM 34-52). As the charts on pages 9 and 10 show, policies for Iraq and Afghanistan specifically prohibited sleep deprivation and stress positions (among other things). For Guantanamo, the policies we have obtained contained a list of permitted techniques that did not include, among other techniques, sleep deprivation and stress positions. In addition, in a statement included in the Hoffman Report (Binder 5, HC00022699), General Randall Schmidt (as the first author of that report) said that sleep deprivation was barred in Guantanamo in March 2004, and The Review of the FBI's Involvement In and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq (Reference 12) states that specific stress positions were expressly prohibited in May 2004. All of the documents to which we refer were freely available to Mr. Hoffman on the internet.

To understand how these changes had come about, an understanding of the timeline of events in 2004 and 2005 – which Mr. Hoffman ignores – is critical.

- Prior to 9/11, Army interrogators had relied on the guidance of the FM 34-52, which contains explicit directions as to which interrogation techniques are allowed and which are considered abusive or cruel, inhumane or degrading treatment. [22]

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[19] Hoffman report, page 12, pdf page 27.

[20] A "BSCT" is a Behavioral Science Consultation Team whose members are trained military health professionals. BSCT's monitoring of interrogations helps ensure compliance with U.S. law, DoD regulations, local guidelines, and ethical standards.

[21] Hoffman report, footnote 923, pdf page 233, and the references to the supporting documents in Binder 3, pdf page 978, DODDON-000760-000772.

[22] Army Field Manual, 34-52; pages I-6 through I-9.

- After 9/11, memos issued by the OLC expanded the range of interrogation techniques that would not be regarded as "torture." When those legal memos were withdrawn in 2003 and 2004, the OLC affirmed that interrogations were governed by the CAT, and it became clear to the military that interrogations were once again governed primarily by the restrictions in FM 34-52.

- **During mid-2004 and early 2005, the FM 34-52 restrictions against abusive interrogations were reinforced by a series of specific policies governing Iraq, Afghanistan and Guantanamo.** As a result – and as many members of the PENS Task Force were aware and as was discussed on the PENS listserv – at the time of the PENS deliberations, the DoD interrogation policies were specific and forceful in their prohibitions against abusive interrogations.

The following charts provide the details of these developments. The relevant portions of the documents to which they refer are appended and the reference for the full document is listed in the reference table.

In December 2004, six months before PENS, the Office of Legal Counsel memos that expanded permissible interrogation techniques were withdrawn, and a new memo made it very clear that the United Nations Convention Against Torture applied to all interrogations

- The OLC memo (one of the "Bybee memos") underlying an expanded view of permissible interrogation techniques was withdrawn in **June of 2004** and a new memo substituted in **December of 2004**, almost six months before PENS convened. The substitute memorandum made it clear that "[t]orture is abhorrent," that interrogators were bound by the United Nations Convention Against Torture, and that the prohibitions in CAT were reflected in US criminal laws. There was no question what the law was at the time of PENS. Reference 1.
- **On February 4, 2005** the General Counsel of DoD was reminded in writing by the OLC that the Yoo OLC memo that underpinned the DoD interrogation program (issued in 2003) had been withdrawn verbally in December of 2003, and that the memorandum was being formally withdrawn. Reference 2.
- Consistent with the issuance of the new local policy guidance memos, in the **late summer of 2004**, DoD notified the OLC that it did not need a replacement for the Yoo 2003 memo. Reference 3.

Thirteen senior-level government investigations and hearings prior to PENS had produced changes in policies and procedures as early as May of 2004, just after the abuses at Iraq were discovered

- **On May 6, 2004**, General Abizaid, the senior command officer for the Central Command area of responsibility (encompassing Iraq and Afghanistan), ordered all of the Central Command to conduct interrogations in accordance with FM 34-52. That Manual prohibits, for example, food deprivation, prolonged stress positions, and abnormal sleep deprivation. Reference 4.
- **On May 18, 2004**, CNN reported that the Army had banned "sleep and sensory deprivation and keeping prisoners in stressful positions" in Iraq and was reviewing the policies in Afghanistan. Reference 5.
- **On March 10, 2005**, testifying before the Senate, Admiral Church had the following exchange with Senator McCain: **Senator McCain:** "Are all the interrogation techniques now in keeping with international law and with treaties that the United States of America is signatory to?" **Admiral Church:** "Yes, sir." **Senator McCain:** "In your mind there is no doubt?" **Admiral Church:** "There is no doubt in my mind." Reference 6.
- **In April of 2005**, the *New York Times* reported that DoD was working on a revision to the Army Field Manual which would contain even more specifics about prohibited interrogation techniques. Reference 7.

IRAQ POLICIES

- **On May 13 2004,** the commander of Combined Joint Task Force 7, then the command structure for Iraq, issued a policy that specifically prohibited the use of six interrogation techniques, including sleep management, stress positions, change of scenery, dietary manipulation, environmental manipulation, and sensory deprivation. Reference 8.
- The Schlesinger report made it clear that restictive interrogation policies for Iraq were in place beginning **May 13, 2004**. That report is in Mr. Hoffman's Binder 4 and is linked to FN 1640 but never analyzed.
- **On January 27, 2005**, the May 6, 2004, policy for all of CENTCOM was reinforced by SOP for everyone in Iraq that stated (emphasis added): "All interrogations and tactical questioning will comply with the applicable provisions of the Law of War, the Geneva Conventions, and with US policy, which require us to treat all persons humanely and with dignity and respect. This policy also expressly prohibits acts of violence or intimidation and physical or mental torture. Humiliation is a violation of the **Geneva Conventions** and is therefore prohibited. Threats, insults, and exposure to inhumane treatment as a means of or aid to interrogation are not authorized and will not be condoned… **Under no circumstances will the following interrogation techniques be approved or utilized: sleep management, stress positions, diet manipulation, environmental manipulation, removal of clothing, or sensory deprivation. Military working dogs will not be used for, or be present during, interrogations**." Reference 9.

AFGHANISTAN POLICIES

- **On May 16, 2004,** an order to the Combined Forces Command-Afghanistan stated unequivocally (emphasis added): "Intelligence questioning of detainees will be conducted strictly I[n] A[ccordance] W[ith] the **Geneva Conventions. Physical abuse of any type, any form of intentional humiliation, verbal abuse, or deprivation of sleep, food or water are explicitly forbidden. Intelligence value remains secondary to treating all detainees humanely with a view to their ultimate release and reconciliation as a part of Afghanistan's future."** The order also stated that **"Persons subject to the** U[niform]C[ode]M[ilitary]J[ustice] (UCMJ) may be punished thereunder" for violating that prohibition. Reference 10.
- The Schlesinger report makes clear that restrictive policies were in place for Afghanistan since **June of 2004**.

GUANTANAMO POLICIES

- The Guantanamo (or "Camp Delta") SOP issued in **March 2004** prohibited abuse, "any form of corporal punishment," physical exercise as punishment (considered a stress position), and "verbal harassment." It also mandated that "detention operations meet with the principals of the **Geneva Conventions**," and stated that violations of the SOP could be punished under the UCMJ. Reference 11.
- General Schmidt has stated publicly that sleep deprivation was barred in Guantanamo in **March 2004** (Hoffman report; Binder 5), and the Schlesinger Report makes it clear that, since **April of 2003**, the only techniques specifically authorized did not include sleep deprivation, stress positions, or exploiting phobias. The Review of the FBI's Involvement In and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq states that in May 2004, specific stress positions were again expressly prohibited. Reference 12.
- The SOP governing BSCT personnel at Guantanamo, issued on **March 28, 2005**, states (emphasis added): "Use psychological expertise to provide monitoring, consultation, and feedback regarding the entire detainee environment in order to assist the command in **ensuring humane treatment of detainees**, the prevention of abuse, and the safety of U.S. personnel. …. In addition to the other duties and qualifications noted in this document, **it is the responsibility of all BSCT personnel to familiarize themselves with and adhere to the UCMJ, Geneva Conventions, applicable rules of engagement, local policies, as well as professional ethics and standards of psychological practice. All BSCT personnel will be expected to:…Immediately report any suspicions of abuse of detainees or misconduct by U.S. personnel** to JIG Director who is responsible for further reporting to JTF Commander." Reference 13.

Hoffman refers to none of the documents described above, although they could have been easily found. (For example, buried in Binder 4 of his supporting materials is a chart in the August 2004 Schlesinger Report (The Final Report of the Independent Panel to Review Department of Defense Detention Operations) that could have guided him to many of these documents and, therefore, through an analysis of the "existing DoD guidelines" in June of 2005.)

Participation of Military Members in Drafting Policies to End Abuses and Prevent Future Abuses

When the March 2005 BSCT SOP was put into effect, Colonel Dunivin was stationed at Guantanamo and had participated in drafting it. She alluded to this in an email contained in Mr. Hoffman's binders.[23] Colonel Banks was an author of the Army Inspector General's report, issued in July of 2004, on interrogations in Iraq and Afghanistan, and was responsible for listing in the report all of the provisions of the Geneva Conventions that applied to interrogations, including, for example, "No degrading treatment."[24] And, at the time of PENS, Colonel Banks was consulting to the Army on a revision to the Army Field Manual that, as a *New York Times* article reported, was to contain even more specifics about prohibited interrogation techniques.[25]

Additionally, after the pictures of abuse from Iraq surfaced, Colonel James met with Dr. Phil Zimbardo, the author of the Stanford prison experiments, to discuss how to minimize abuses. While on a plane to Iraq, Colonel James outlined the beginnings of a SOP to prevent abuses. The first restrictive SOP was put in place in May of 2004, expressly prohibiting sleep deprivation and stress positions and incorporating the Geneva Conventions. While in Iraq, Colonel James trained staff on appropriate interviewing techniques that were consistent with those documents. He noted at least twice on the PENS listserv that restrictive policies were in place at the time of PENS, but he could speak about those prohibitions only in general terms since their contents were still classified.

Mr. Hoffman failed to ask about any of these activities during his multiple interviews with us. When we tried to bring up these facts, he told us they "weren't relevant" and he wanted to know only about our interactions with APA. We even offered to try to have the general topics Mr. Hoffman wanted to speak about cleared in advance with the military but were rebuffed by him. Yet these topics are clearly relevant to the tale Mr. Hoffman spins, and our attorney – without the resources of a major law firm – was able to gather the relevant documents simply by searching the internet.[26]

2. All Available Evidence Showed that Abusive Interrogations in the Military Had Ended

The Hoffman report states that the "collusion" to create loose PENS guidelines took place (emphasis added):

> … (ii) with knowledge that there likely had been abusive interrogation techniques used **and that there remained a substantial risk, that without strict constraints, such abusive interrogation**

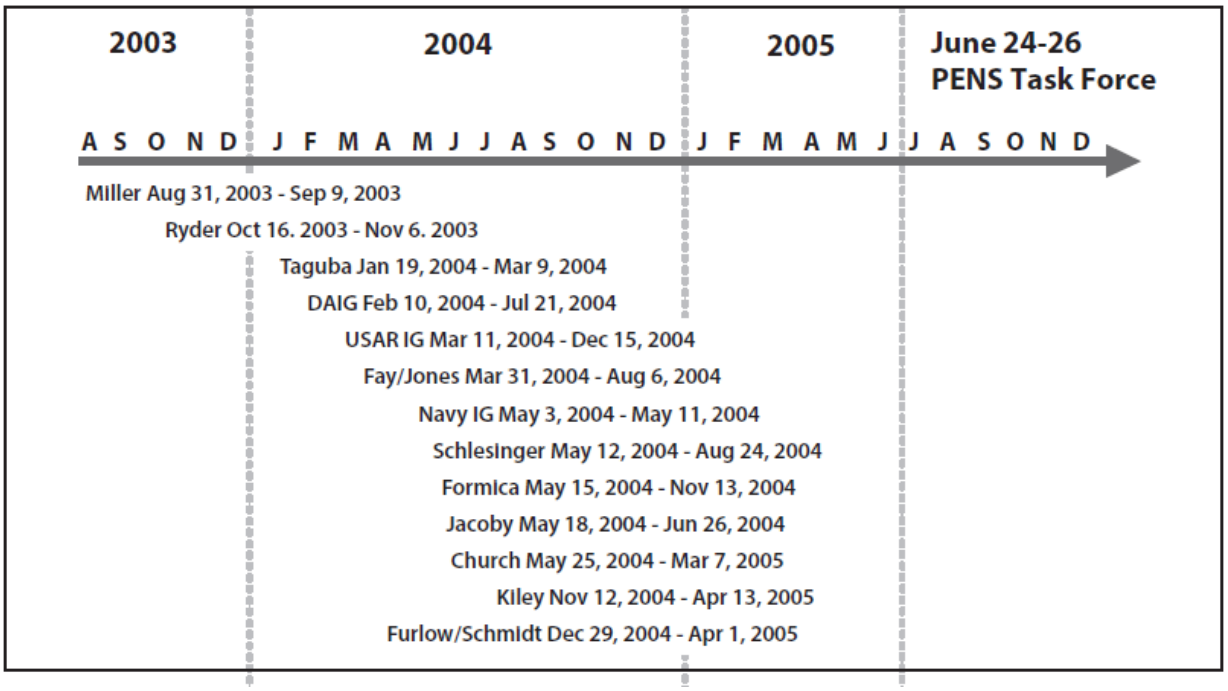
[23] Hoffman report, Binder 1, pdf page 895, APA 0035139.
[24] Department of the Army the Inspector General (DAIG) Report, page E-9, pdf page 211.
[25] New York Times article concerning the new Army Field Manual, April 28, 2005.
[26] The first Iraq SOP is still classified; however, its contents were partially disclosed in the Formica report (Reference 8). The Iraq SOP from January 2005, cited herein, is still mostly classified but is publicly available (Reference 9). To the extent it is classified we have refused to discuss its contents or comment on it with our attorney.

techniques would continue; and (iii) with substantial indifference to the actual facts regarding the potential for ongoing abusive interrogations techniques.[27]

These APA officials took this position while intentionally avoiding an effort to gather information about whether "enhanced" interrogation techniques were still occurring—although they would have had every reason to believe that stress positions and sleep deprivation (among others) were still being used at the time of PENS because of the reluctance of Banks and other DoD officials to declare them prohibited. We would not call this "supporting the implementation of enhanced interrogation techniques," but we would say this was supporting the implementation by DoD of the interrogation techniques it wanted to implement, without substantial constraints from APA, and with knowledge that there likely had been abusive interrogation techniques used, and there remained a substantial risk that without strict constraints, such abusive interrogation techniques would continue.[28]

Before the time of PENS, as the chart below illustrates, 13 senior-level investigations into detainee abuse had taken place (additional reports were released after PENS). All of those reports are either publicly available in some form or have been publicly reported on. Yet Mr. Hoffman gives very short shrift to their contents, and ignores most of their findings.[29]

TIMELINE: MAJOR SENIOR LEVEL REPORTS AND INVESTIGATIONS PRIOR TO PENS



Everyone knew that abuses had occurred. However, Mr. Hoffman provides no evidence – and there is none – to back up his assertion that there was a "substantial risk" abuses were likely to continue in DoD interrogations. Instead, his assertion relies solely on the fact that abuses had occurred and the

[27] Hoffman report, page 9, pdf page 24.
[28] Hoffman report, page 68, pdf page 83.
[29] Chart adapted from Office of the Inspector General of the Department of Defense, Review of DoD-Directed Inspections of Detainee Abuse, August 25, 2006; page 32, pdf page 42.

mistaken assertion that there were no restrictive guidelines in place. Given the guidelines actually in place, the bright light cast onto abuses by many reports, the commitment of military leadership to preventing abuses, the authority given military psychologists to report abuses, and the realization that the whole world was watching, it was highly unlikely that abusive interrogations would be attempted or, if attempted, could take place undetected within the DoD. (Again, our knowledge is limited to the DoD, not the CIA.)

In the chart on page 9, we cited an exchange between Senator McCain and Admiral Church during Admiral Church's March 2005 testimony before the Committee on Armed Services, which was charged with reviewing the interrogation polices. The exchange deserves repetition (See Reference 6):

Senator McCain: "Are all the interrogation techniques now in keeping with international law and with treaties that the United States of America is signatory to?"
Admiral Church: "Yes, sir."
Senator McCain: "In your mind there is no doubt?"
Admiral Church: "There is no doubt in my mind."

Here again, Mr. Hoffman conflates time periods and ignores the specifics of what transpired between the post-9/11 period and the period preceding PENS, as well as the differences between CIA and DoD approaches to interrogation policies.

3. The PENS Guidelines Were Understood by Military Psychologists to Prohibit Abusive Interrogations

As we explained above, the claim that the PENS guidelines were too general to constrain abuses loses its significance if military psychologists were already bound by strict military guidelines, as they were. However, there was no doubt among military psychologists that the PENS guidelines themselves prohibited techniques that contravened the FM 34-52 or the international conventions incorporated in U.S. laws. It is striking that Mr. Hoffman avoids backing up his characterization of the guidelines by actually quoting them.

In direct contrast to Mr. Hoffman's characterizations of the PENS guidelines, they make it clear that psychologists are obligated to follow the most *recent* regulations governing their roles, and that those regulations incorporate the U.N. Convention Against Torture as well as the Geneva Convention Relative to the Treatment of Prisoners of War. (And, as we have demonstrated, the DoD regulations include even more specific restrictions.) In addition, the governing OLC guidance – the two memos issued by Acting Assistant Attorney General Daniel Levin in December 30, 2004 and February 4, 2005 – that applied to the DoD made clear that the CAT as well as relevant U.S. laws applied to military interrogations. No military psychologist could rationally have believed at the time of PENS that relevant Geneva Conventions and the CAT should not apply to their work, nor did the military psychologists involved with PENS take that position.

Statement four of the PENS Guidelines states (emphasis added):

> Psychologists do not engage in behaviors that violate the laws of the United States, although psychologists may refuse for ethical reasons to follow laws or orders that are unjust or that violate basic principles of human rights. Psychologists involved in national security-related activities **follow all applicable rules and regulations that govern their roles.** Over the course of the recent United States military presence in locations such as Afghanistan, Iraq, and Cuba, **such rules and regulations have been significantly developed and refined**. Psychologists have an ethical responsibility to be informed of, familiar with, **and follow the most recent applicable regulations and rules**. The Task Force notes that **certain rules and regulations incorporate texts that are fundamental to the treatment of individuals whose liberty has been curtailed, such as the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the Geneva Convention Relative to the Treatment of Prisoners of War.** (*The original PENS document then includes a link to those two documents*.)

Mr. Hoffman simply assumes that, because the PENS guidelines did not ultimately reflect the views of some of the Task Force's members (views he clearly adopts as his own), malign motives were in play to make the guidelines ineffective. Aside from that obvious bias, his assertions contain the following mistakes:

- As we discussed above, although he emphasizes the outdated Bush administration OLC memos (the "Bybee" and "Yoo" memos) as the appropriate context within which words such as "torture" would be interpreted, he ignores the fact that the Bybee and Yoo memos had been withdrawn and that the military had been issuing stringent interrogation guidelines (as had been reported in the press). No military psychologist involved in national security interrogations was in doubt that the military had increasingly adopted a very different attitude toward what were permissible interrogation techniques. The local rules and regulations governing interrogations, and therefore military psychologists' behavior, all incorporated the Geneva Conventions and contained strict prohibitions against abusive techniques.[30] Although some of the regulations were still classified at that time and could not be discussed in detail, they were well known to and governed the conduct of the PENS Task Force military members.

- Mr. Hoffman states that, because efforts by some PENS Task Force members to push for definitions based on the Geneva Conventions were rejected, the report did not ethically bind psychologists by human-rights standards. This vastly oversimplifies and distorts the debate within the Task Force. Statement Four states clearly that psychologists are bound by the Geneva Conventions. The debate was not about that question. Federal employees and military members pledge adherence to the laws of the United States – but those laws automatically encompass treaties to which we are a party. Military members expressed concern that they could not commit to a broad adherence to international law because it could conflict with the wording of the oath that they take. The debate, therefore, was about whether the PENS guidelines, if they were to be effective for military psychologists, should refer directly to international laws or to the U.S. laws that incorporate the relevant

[30] Colonel James made this point several times on the PENS listserv, pages 47; 144.

international laws. This is a debate about the relationship between U.S. and international law that is conducted in many settings, not just this one.

In this setting, the debate was further complicated by the fact that the U.S. government held that the Geneva Conventions applied only to certain enemy combatants, and not all national security detainees.[31] Clearly, throughout this period there were significant disputes about the law governing detainee interrogations, disputes conducted at levels of government beyond ours. ***Those of us in the military set out to change the policies on the ground that governed psychologists' conduct to make it clear that, at each site, the Geneva and U.N. Conventions applied and abusive interrogations were not permitted. This approach allowed us to bring about these changes while staying in the chain of command and without contradicting our government's stated policy on this legal issue.[32] All of our work was motivated by a desire to provide all psychologists who would work in these settings in the future with guidance that would allow them to resist abusive techniques and obligated them to report any suspected abuses that might occur. All of us believed this was extremely important work for our profession. All of us also firmly believe that the standards defined by the Geneva and U.N. Conventions should apply to all detainees – and, in fact, some of the guidelines we have described make that clear.*** As even Jean Marie Arrigo, one of our most vocal critics, noted, Colonel James and Colonel Banks both stated that they believed that the relevant Geneva Conventions should apply.[33] None of us doubted for a minute that we should abide by the Geneva Conventions in every circumstance, whether or not detainees were considered enemy combatants.[34]

- Mr. Hoffman ignores that Dr. Behnke had clearly studied the scope of U.S. laws and the appropriate approach to relying on U.S. law in the PENS guidelines. As indicated by Dr. Behnke's handwritten notes, his position was informed by a May 2005 article by the Physicians for Human Rights that described all the applicable U.S. laws that allowed sanctions, including criminal sanctions, to be imposed on psychologists who participated in abusive or cruel, inhumane or degrading treatment. [35] Those laws incorporate the prohibitions of the Geneva Conventions and of the CAT to which the United States is a signatory. (For example, the 1999 Initial Report of the United States to the U.N. Committee against Torture states that "Every act of torture within the meaning of the [CAT] is illegal under existing federal and state law, and any individual who commits such an act is subject to penal sanctions as specified in criminal statutes."[36]) Dr. Behnke's reliance on that careful legal analysis is clearly shown in

[31] The Obama Administration has dropped the term "enemy combatant" but retains the right to detain those who provide "substantial" assistance to al-Qaeda and its associates globally.
[32] Understanding the Oath of Office taken by military members and federal employees.
[33] Hoffman report, Binder 3, Arrigo notes pdf pages 805-830; 815.
[34] In stark contrast to what Mr. Hoffman concludes, Senator Levin, in his remarks when releasing the Senate Armed Services Committee Report in April of 2009, noted that military psychologists – including Colonel Banks – warned against the use of harsh techniques as early as 2002: "On October 2, 2002, Lieutenant Colonel Morgan Banks, the senior Army SERE psychologist, warned against using SERE [Survival Evasion Resistance and Escape] training techniques during interrogations in an email to personnel at GTMO ….".
[35] Break Them Down, May 2005; Hoffman report, Binder 4, pdf page 985. HC 00008888.
[36] Human Rights Watch, quoting from the U.N. Committee Report Against Torture, March 11, 2003.

notes from his files that were given to Mr. Hoffman. Although Mr. Hoffman includes them in his document binders, he does not discuss them in his report.

Within the PENS Task Force, there was at times heated debate, even among the various members of the military branches, about whether the guidelines should be more specific about permissible and prohibited techniques and whether the guidelines should rely on the Geneva Conventions directly or on the U.S. laws that incorporated the Conventions. Throughout Mr. Hoffman's report, it is clear that he takes sides on those issues, despite his claim to neutrality. (See, for example, page 27, where he concludes, without any evidence, that it is "naïve or intentionally disingenuous" to believe that psychologists can simultaneously prevent abusive interrogations and encourage effective techniques.) But the outcome of the debates was entirely reasonable and, we believe, correct.

Other Conclusions in the Report Rest on Similar Factual Inaccuracies

Our more detailed reply will respond to Mr. Hoffman's other major conclusions, all of which rest similarly on omissions, opinions masquerading as fact, and unsupported inferences about motives. At this time, we set forth only a few of these inaccuracies.

Appropriately disclosing and navigating the alleged conflict of interest

The report asserts that, because Dr. Newman is married to Colonel Dunivin, he had a "classic conflict of interest" that was not adequately disclosed and should have barred him from participating in any aspect of the PENS process. [37] As is the case again and again, a paragraph that states a conclusion is not accompanied by any of the facts or documents that depict a different or more complex story, although they are sometimes buried deep inside the report.

- ***Disclosure***. Although the report acknowledges[38] that various APA officials were aware of the marriage, it does not make it clear that Dr. Newman had disclosed the marriage to the Board of Directors and his superiors, as well as to others in the APA. The marriage was referenced in October 2002 in the *Monitor*, the official publication of the APA, which is sent to all members, with a picture listing their respective titles and positions.[39] In addition, based on an email drafted by Nathalie Gilfoyle, the APA's General Counsel, in the context of the issue described in the fourth of these bullet points, it appears that the marriage had been disclosed to the APA Council in 2004.[40] In sum, all of Dr. Newman's superiors and many members of the Task Force, including the person who nominated him for inclusion as an observer, were aware of the relationship.[41] Moreover, it was also commonly known that Colonel Dunivin was deployed to Guantanamo. As Geoff Mumford, an APA staff member, said in an email to which Mr. Hoffman refers, "it doesn't appear to be a secret that she's been down there."[42]

[37] Hoffman report, pages 13-14, pdf pages 28-29.
[38] Hoffman report, pages 13-14, pdf pages 28-29.
[39] APA Monitor, October 2002, Reference 14.
[40] Hoffman report, Binder 2, pdf pages 1401-1404, APA 0138161.
[41] Hoffman report, page 258, pdf page 277.
[42] Hoffman report, page 218, pdf page 237; Binder 1, pdf page 797, APA 0030060.

- ***General Counsel's Awareness.*** Ms. Gilfoyle was presumably fully capable of deciding whether Dr. Newman's role as an observer constituted a conflict and, if she thought it might be, of saying so. Although Mr. Hoffman states that "Gilfoyle … was surprised to learn of Newman's involvement during the meetings,"[43] on Sunday, June 26, she and others received an email from a member of the Task Force **listing Dr. Newman (and her) as among those who consulted on the project**. She then emailed Dr. Behnke about her concerns about how the draft would be reviewed before it was released, **and copied Dr. Newman.** In those exchanges, she did not express surprise or concern about his involvement. Moreover, although we cannot tell from the documents in the Hoffman report the degree of Ms. Gilfoyle's ongoing involvement in the PENS discussions, she was apparently sufficiently involved to be able to tell Dr. Behnke, when she received the draft report, "I think this looks great and captures the discussion well."[44]

- ***Colonel Dunivin and Dr. Newman's Role****.* Colonel Dunivin **was not a member** of the PENS Task Force, **did not attend** the Task Force meeting, and **did not participate in its deliberations** at all. Although she submitted names for inclusion on the Task Force based on competencies and appropriate expertise, the decisions about whom to include were made by those to whom the marriage and potential conflict had been fully disclosed. Dr. Newman **was not a member of the Task Force** or of its listserv and did not help to draft its report. Instead, he was **a non-voting observer**, chosen by people to whom the marriage had been fully disclosed. A review of the notes of the Task Force meetings finds that he spoke less frequently than many others. His comments focused appropriately on the role of psychology and psychologists in the interrogation process, and were consistent with, and appropriate for, his duty of loyalty to his employer and his position as the Executive Director for Professional Practice for APA.

- ***Previous consideration of a potential conflict issue.*** In a footnote, the Hoffman report says that the marriage had previously raised concerns and that, in late 2004 (just three months before the PENS Task Force was approved by the Board), a Council member flagged it as a potential conflict of interest when Dr. Dunivin was running for a position on the APA Finance Committee. The footnote adds, without detail, that she withdrew her candidacy. It cites to, but does not describe, a document buried in the document binders.[45] That document includes a description, in an email, of advice requested by Ms. Gilfyole on behalf of the APA Board from PriceWaterhouseCoopers (PwC). According to the email, PwC advised that "… this type of service [that is, service on the committee] is not prohibited." The email went on to state that full disclosure would minimize the risk of a conflict, that actual conflicts could be dealt with by recusal on an issue-by-issue basis, and that recusal "should be adequate to address an actual conflict or the appearance of a conflict regarding a matter directly affecting the Practice Directorate."[46] The document also makes clear that Dr. Dunivin was not required to withdraw her candidacy for the Finance Committee because the marriage was regarded as a

[43] Hoffman report, page 257, pdf page 276.
[44] Hoffman report, Binder 1, pdf page 1064, APA 0040782.
[45] Hoffman report, Binder 2, pdf pages 1401-1404, APA 0138161.
[46] *Id*.

conflict in and of itself, an inference that the wording of Mr. Hoffman's footnote encourages. Although the existence of this advice from PwC was never disclosed to Dr. Newman, Ms. Gilfoyle as General Counsel of APA had the benefit of the guidance at the time of the PENS meetings. Because we do not have the full language of the PwC advice, we cannot determine its more specific relevance to the PENS discussions. However, the failure to disclose it or include the full text of the advice – yet another omission – distorts Mr. Hoffman's description of the entire conflict issue.

The proper handling of an ethics complaint against Colonel James

As one of his three main conclusions, Mr. Hoffman states broadly that ethics complaints were handled improperly to protect psychologists involved in interrogations.[47] As evidence for that conclusion, Mr. Hoffman cites an ethics complaint filed against Colonel James. Despite acknowledging that, if there was a flaw in how ethics complaints were handled, it was systemic and not related specifically to psychologists involved in interrogations, and despite acknowledging on page 522 of the 528-page text of the report that its handling was "technically permissible," he says it demonstrated a lack of diligence and, by implication, a desire to protect Colonel James.[48] **But Mr. Hoffman fails to state that the same complainant filed multiple complaints concerning Colonel James with two state licensing boards, and that no board, and no court reviewing any of those state board decisions, has found those allegations to have merit or to have been handled improperly.** At this point, Colonel James' conduct has been the subject of at least seven actions. Once again, the report's omission of easily available facts distorts the story it tells.[49]

[47] Hoffman report, page 10, pdf page 25.

[48] Hoffman report, pages 58-60, pdf pages 73-75.

[49] One of the associates whose name appears on the report, Ms. Heather Benzmiller, completed a fellowship that appears to have been sponsored by Sidley Austin at the McArthur Justice Center. While Ms. Benzmiller was completing her fellowship, Mr. Joseph Margulies, Associate Director of the Center, represented Mr. Zayn al Abidin Mohamed Hussein, known as Abu Zubaydah. His interrogation became the subject of the Office of Legal Counsel memos justifying an expanded view of permissible enhanced interrogation techniques. While we do not know the nature of Ms. Benzmiller's involvement, if any, in that representation, and we believe the representation was important work, that relationship should have been disclosed. That is especially the case given the Center's quite small staff, which suggests Ms. Benzmiller would have been aware of the representation even if she was not involved in it. Additionally, another associate who was listed on the brief and attended many of our interviews, Mr. S. Yasir Latifi, was an intern at WilmerHale, counsel to the APA, for two years prior to attending law school.

Conclusion

Mr. Hoffman asserts that he set out to "follow the evidence" wherever it led him. If that was indeed his aim, he failed. He omits key evidence, misstates facts, makes assertions backed by no evidence, and draws conclusions about intent and motives that are based on his own inferences rather than facts. Far from conducting an objective review, he has created a brief to support the charges leveled by those who attacked us and, more generally, attacked the role of psychologists in military interrogations. His bias has done untold damage to individual reputations and careers, and to the profession.

That damage has been compounded by the APA's wholly uncritical acceptance of the report, its refusal to give those attacked a meaningful opportunity to respond, and its lack of any due process before taking actions on the basis of the report. We urge those of you concerned about our profession to press the APA to review the Hoffman report with the rigor we would hope all psychologists would apply to any document, much less one with such drastic consequences.

Most importantly, given that so many questions remain, a fair process is necessary to review the report, hear both sides, and separate fact from fiction. This process should not involve those in the APA governance structure or those who by word or action have already taken sides. Rather, it should involve a truly neutral third party such as a respected former judge without political leanings.

Please join us in requesting that the APA Board meet with those individuals most deeply affected by the report, along with their legal counsel, in order to work out a mutually acceptable process for moving forward to achieve a fair resolution. (We have supplied the Board members' email addresses and the text of a suggested email to them in a separate cover letter to this document.)

We are in the process of drafting a more complete reply and will publish that as soon as possible.[50] In the meantime, we suggest that anyone who wants to read more about these issues can begin with the government investigations into detainee abuse set forth above, none of which support Mr. Hoffman's version of the truth. In particular, the Senate Armed Services Committee and Church Reports provide an excellent context in which to view Mr. Hoffman's factual inaccuracies.[51]

For ease of reference, we have attached and highlighted the relevant portions of documents that we have referenced. Here we also provide links to the full text of those documents where appropriate.

[50] That reply will also list the many documents that appear in duplicate in Mr. Hoffman's binders, or lengthy documents that were unnecessarily included. We believe that, once those documents are stripped out, the relevant time periods made clear, and the CIA references deleted, Mr. Hoffman's report rests on very thin support.

[51] Condensed Public Broadcasting Timeline of selected reports; Senate Armed Service Committee Report; Church Report.

References:

1. Levin, OLC Memo, December 30, 2004.
2. Levin Memo, reminding the General Counsel of DoD that the Yoo OLC workgroup memo supporting enhanced interrogation techniques within the DoD had been withdrawn in December of 2003, and appending testimony of the Associate Deputy Attorney before the House of Representatives, February 4, 2005.
3. Office of Professional Responsibility report, stating DoD stated they did not need to replace the Yoo OLC memo, after testimony of Patrick Philbin, the Associate Deputy Attorney General, July 14, 2004.
4. Senate Armed Services Committee Report stating General Abizaid ordered that the Army Field Manual (34-52) applied to all interrogations in Iraq and Afghanistan, May 6, 2004; also stated in the Church report, March of 2005 (Executive Summary released; subsequently redacted document released).
5. CNN news article stating that sleep and sensory deprivation and keeping prisoners in stressful positions had been banned in Iraq and was under review in Afghanistan, May 18, 2004.
6. Testimony of Admiral Church before the Committee on Armed Services and Subcommittee on Personnel of the Committee on Armed Services, United States Senate, March 10, 2005.
7. New York Times article reporting on the new limits of the Army Field Manual (for which Colonel Banks was a consultant), April 28, 2005.
8. Formica Report listing techniques prohibited in Iraq on May 13, 2004.
9. MNF-I policy governing interrogations, January 27, 2005; **PORTIONS OF THIS DOCUMENT ARE STILL CLASSIFIED**.
10. Afghanistan Order prohibiting specific techniques including sleep deprivation, verbal abuse or any form of intentional humiliation, May 16, 2004.
11. Guantanamo Camp Delta SOP, March 2004.
12. A Review of the FBI's Involvement In and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq, May 2008; revised October 2009.
13. BSCT SOP Colonel Dunivin drafted, March 28, 2005.
14. October 2002, Monitor Article and photo of Colonel Dunivin and Dr. Newman (attached to this response).

CHART REFERENCE 1

U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

December 30, 2004

MEMORANDUM FOR JAMES B. COMEY
DEPUTY ATTORNEY GENERAL

Re: Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A

Torture is abhorrent both to American law and values and to international norms. This universal repudiation of torture is reflected in our criminal law, for example, 18 U.S.C. §§ 2340-2340A; international agreements, exemplified by the United Nations Convention Against Torture (the "CAT")[1]; customary international law[2]; centuries of Anglo-American law[3]; and the longstanding policy of the United States, repeatedly and recently reaffirmed by the President.[4]

This Office interpreted the federal criminal prohibition against torture—codified at 18 U.S.C. §§ 2340-2340A—in *Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A* (Aug. 1, 2002) ("August 2002 Memorandum"). The August 2002 Memorandum also addressed a number of issues beyond interpretation of those statutory provisions, including the President's Commander-in-Chief power, and various defenses that might be asserted to avoid potential liability under sections 2340-2340A. *See id.* at 31-46.

Questions have since been raised, both by this Office and by others, about the

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[1] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85. *See also, e.g.*, International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

[2] It has been suggested that the prohibition against torture has achieved the status of *jus cogens* (*i.e.*, a peremptory norm) under international law. *See, e.g., Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 714 (9th Cir. 1992); *Regina v. Bow Street Metro. Stipendiary Magistrate Ex Parte Pinochet Ugarte (No. 3)*, [2000] 1 AC 147, 198; *see also* Restatement (Third) of Foreign Relations Law of the United States § 702 reporters' note 5.

[3] *See generally* John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (1977).

[4] *See, e.g.*, Statement on United Nations International Day in Support of Victims of Torture, 40 Weekly Comp. Pres. Doc. 1167 (July 5, 2004) ("Freedom from torture is an inalienable human right . . . ."); Statement on United Nations International Day in Support of Victims of Torture, 39 Weekly Comp. Pres. Doc. 824 (June 30, 2003) ("Torture anywhere is an affront to human dignity everywhere."); *see also Letter of Transmittal from President Ronald Reagan to the Senate* (May 20, 1988), *in Message from the President of the United States Transmitting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, S. Treaty Doc. No. 100-20, at iii (1988) ("Ratification of the Convention by the United States will clearly express United States opposition to torture, an abhorrent practice unfortunately still prevalent in the world today.").

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CHART REFERENCE 2

U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

February 4, 2005

Honorable William J. Haynes II
General Counsel
Department of Defense
1600 Defense Pentagon
Washington, D.C. 20101-1600

Re: Memorandum for William J. Haynes II, General Counsel of the Department of Defense, from John Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Military Interrogation of Alien Unlawful Combatants Held Outside the United States* (March 14, 2003) ("March 2003 Memorandum")

Dear Jim:

In December 2003, then-Assistant Attorney General Jack Goldsmith advised you that the March 2003 Memorandum was under review by this Office and should not be relied upon for any purpose. Assistant Attorney General Goldsmith specifically advised, however, that the 24 interrogation techniques approved by the Secretary of Defense for use with al Qaeda and Taliban detainees at Guantanamo Bay Naval Base were authorized for continued use as noted below. I understand that, since that time, the Department of Defense has not relied on the March 2003 Memorandum for any purpose. I also understand that, to the extent that the March 2003 Memorandum was relied on from March 2003 to December 2003, policies based on the substance of that Memorandum have been reviewed and, as appropriate, modified to exclude such reliance. This letter will confirm that this Office has formally withdrawn the March 2003 Memorandum.

The March 2003 Memorandum has been superseded by subsequent legal analyses. The attached Testimony of Patrick F. Philbin before the House Permanent Select Committee on Intelligence, July 14, 2004, reflects a determination by the Department of Justice that the 24 interrogation techniques approved by the Secretary of Defense mentioned above are lawful when used in accordance with the limitations and safeguards specified by the Secretary. This also accurately reflects Assistant Attorney General Goldsmith's oral advice in December 2003. In addition, as I have previously informed you, this Office has recently issued a revised interpretation of the federal criminal prohibition against torture, codified at 18 U.S.C. §§ 2340-2340A, which constitutes the authoritative opinion of this Office as to the requirements of that statute. See Memorandum for Deputy Attorney General James B. Comey from Daniel Levin,

Acting Assistant Attorney General, Office of Legal Counsel, Re: Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A (Dec. 30, 2004) (copy attached).

Please let us know if we can be of further assistance.

Sincerely,

Daniel Levin
Acting Assistant Attorney General

Attachments

CHART REFERENCE 3

2. The Withdrawal of the Yoo Memo

Goldsmith's reaction to the Yoo Memo was that it was "deeply flawed,"[85] and his immediate concern was that the Defense Department might improperly rely on the opinion in determining the legality of new interrogation techniques.[86] The broad nature of the memorandum's legal advice troubled him because it could have been used to justify many additional interrogation techniques. As he later explained in an email to other OLC attorneys, he saw the Yoo Memo as a "blank check" to create new interrogation procedures without further DOJ review or approval.[87]

Accordingly, Goldsmith telephoned Haynes in late December 2003 and told him that the Pentagon could no longer rely on the Yoo Memo, that no new interrogation techniques should be adopted without consulting OLC, and that the military could continue to use the noncontroversial techniques set forth in the Working Group Report, but that they should not use any of the techniques requiring Secretary of Defense approval without first consulting OLC. Having

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85 [redacted] told us that after Goldsmith read the Yoo Memo, he told her it was "riddled with error."

86 Goldsmith told us that he approached his review of the Yoo Memo with great caution, because he was reluctant to reverse or withdraw a prior OLC opinion. In reviewing the memorandum, he did not intend to identify any and all possible errors, but was looking for the "really big fundamental mistakes that couldn't be justified and that were perhaps unnecessary."

87 Philbin responded to that email as follows:

> John's March memorandum was not a blank check at least as of the time [redacted] started work at DoD OGC (Summer 2003) because I told her to make sure that they did not go beyond the Rumsfeld approved procedures and did not rely on the memo. This was only an oral caution but please do not sell us short by ignoring it.

Goldsmith answered as follows: "I'm not selling anyone short – It's just that Haynes said he heard nothing about that advice."

Goldsmith left the Justice Department on July 17, 2004, before he was able to finalize a replacement for the Yoo Memo. On July 14, 2004, then Associate Deputy AG Patrick Philbin testified before the House Permanent Select Committee on Intelligence as to the legality of the 24 interrogation methods that had been approved for use by the Defense Department. Sometime thereafter, the Defense Department reportedly informed OLC that it no longer needed a replacement for the Yoo Memo.

5. The Withdrawal of the Bybee Memo

On June 8, 2004, the Washington Post reported that "[i]n August 2002, the Justice Department advised the White House that torturing al Qaeda terrorists in captivity abroad 'may be justified,' and that international laws against torture 'may be unconstitutional if applied to interrogations' conducted in President Bush's war on terrorism, according to a newly obtained memo." On June 13, the *Washington Post* made a copy of the Bybee Memo available on its web site.

Up until this time, Goldsmith's focus had been on the Yoo Memo, rather than the Bybee Memo. Shortly after the Bybee Memo was leaked, Goldsmith was asked by the White House if he could reaffirm the legal advice contained in the Bybee Memo. Because the analysis in that document was essentially the same as the Yoo Memo, which he had already withdrawn, Goldsmith concluded that he could not affirm the Bybee Memo. He consulted with Comey and Philbin, who agreed with his decision, and on June 15, 2004, Goldsmith informed Attorney General Ashcroft that he had concluded that the Department should withdraw the Bybee Memo. Although Ashcroft was "not happy about it," according to Goldsmith, he supported the decision. The following day, June 16, 2004, Goldsmith submitted a letter of resignation to become effective August 6, 2004.

Later that week, Goldsmith notified the White House Counsel's Office that he was planning to withdraw the Bybee Memo. According to Goldsmith, this caused "enormous consternation in the Executive Branch because basically they thought the whole program was in jeopardy," but the White House did not resist his decision.

CHART REFERENCE 4

[redacted]

use" at Bagram.[1729] That list included the use of "safety positions," "sleep adjustment," "sensory overload," invading a detainee's personal space to "increase psychological discomfort," "dietary manipulation," adjusting temperature or introducing an unpleasant smell to "create moderate discomfort," and using blacked out goggles as an interrogation technique.[1730]

D. Special Mission Unit Task Force Interrogation Polices (U)

[redacted]

Prior to March 2004, however, each operated under a distinct interrogation SOP. On March 26, 2004 the SMU TF implemented a single interrogation policy that covered SMU TF operations in both Iraq and Afghanistan.[1731]

[redacted] The March 26, 2004 SMU SOP authorized 14 "interrogation techniques" not explicitly listed in FM 34-52, including use of muzzled dogs, "safety positions (during interrogations)," sleep adjustment/management, mild physical contact, isolation, sensory overload, sensory deprivation, and dietary manipulation.[1732]

[redacted] According to the Church Special Focus Team Report, the March 26, 2004 SMU TF SOP included a larger number of interrogation techniques outside of FM 34-52 than the SOPs of any other military organization at the time.[1733] In fact, many of the techniques in that SOP had been abandoned by conventional forces in Afghanistan months earlier, after CENTCOM identified legal concerns with the techniques.[1734] Although the authority in the March SOP to use "muzzled dogs" was rescinded on April 22, 2004, the remainder of the techniques remained authorized until May 6, 2004, when GEN John Abizaid, the CENTCOM Commander, suspended use of all non-FM 34-52 techniques.[1735] The Church Special Focus Team report said the techniques were suspended as a result of detainee abuse at Abu Ghraib.[1736] GEN Abizaid stated

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[1729] CJTF-180 SJA Memorandum for Record, *CJTF-180 Detainee Operations Standard Operating Procedures* (March 27, 2004).

[1730] Ibid.

[1731] *Church Special Focus Team Report* at 15.

[1732] [redacted] The 14 techniques were the use of military working dogs, safety positions (during interrogations), use of blackened goggles/ear muffs during interrogation, sleep adjustment/sleep management, use of female interrogators, sensory deprivation, sensory overload, change of environment/ environmental manipulation, diet manipulation, use of falsified documents or reports and deception, use of individual fears, use of isolation, fear of long-term incarceration, and mild physical contact. Battlefield Interrogation Team and Temporary Screening Facility Standing Operating Procedures (SOP), Change 2 Dated May 18, 2004.

[1733] *Church Special Focus Team Report* at 15.

[1734] Ibid.

[1735] Ibid. at 16; Memorandum from SMU TF Commanding General to USCENTCOM, [redacted] *Request for Use of Interrogation Techniques* (May 27, 2004); CENTCOM/SOCOM Briefing to Committee Staff (December 21, 2007).

[1736] *Church Special Focus Team Report* at 16.

was based in part on interrogation techniques being used at the time by units in Afghanistan. On August 18, 2003, the Joint Staff's Director for Operations (J-3) sent a message requesting that the SOUTHCOM Commander provide a team of experts in detention and interrogation operations to provide advice on relevant facilities and operations in Iraq. As a result, from August 31 to September 9, 2003, the Joint Task Force Guantanamo (JTF-GTMO) Commander, Major General Geoffrey Miller, led a team to assess interrogation and detention operations in Iraq. One of his principal observations was that CJTF-7 had "no guidance specifically addressing interrogation policies and authorities disseminated to units" under its command.

(U) To rectify this apparent problem, the CJTF-7 Commander, Lieutenant General Ricardo Sanchez, published the first CJTF-7 interrogation policy on September 14, 2003. This policy was heavily influenced by the April 2003 JTF-GTMO interrogation policy, which MG Miller had provided during his visit, and was also influenced by the A/519 draft policy which, as noted above, contained some interrogation techniques in use in Afghanistan. However, LTG Sanchez and his staff were well aware that the Geneva Conventions applied to all detainees in Iraq, and thoroughly reviewed the CJTF-7 policy for compliance with the Conventions prior to its approval.

(U) After reviewing the September policy once it was issued, CENTCOM's Staff Judge Advocate considered it overly aggressive. As a result, CJTF-7 promulgated a revised policy on October 12, 2003 that explicitly superseded the previous policy. This new policy removed several techniques that had been approved in the September 2003 policy, rendering the October 2003 policy quite similar to the guidance found in FM 34-52. It should be noted that none of the techniques contained in either the September or October 2003 CJTF-7 interrogation policies would have permitted abuses such as those at Abu Ghraib.

(U) On May 13, 2004, CJTF-7 issued another revised interrogation policy, which remains in effect today. The list of approved techniques remained identical to the October 2003 policy; the principal change from the previous policy was to specify that under no circumstances would requests for the use of certain techniques be approved. While this policy is explicit in its prohibition of certain techniques, like the earlier policies it contains several ambiguities, which - although they would not permit abuse - could obscure commanders' oversight of techniques being employed, and therefore warrant review and correction. (The details of these ambiguities remain classified, but are discussed in the main body of this report.) As noted above, in June 2004 this policy was adopted for use in Afghanistan.

(U) Subsequent to the completion of this

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report, we were notified that the Commander, Multi-national Forces Iraq (MNF-I), General George W. Casey, Jr., had approved on January 27, 2005 a new interrogation policy for Iraq. This policy approves a more limited set of techniques for use in Iraq, and also provides additional safeguards and prohibitions, rectifies ambiguities, and – significantly – requires commanders to conduct training on and verify implementation of the policy and report compliance to the Commander, MNF-I.

Interrogation Techniques Actually Employed by Interrogators (U)

(U) Guantanamo Bay, Cuba

(U) In GTMO, we found that from the beginning of interrogation operations to the present, interrogation policies were effectively disseminated and interrogators closely adhered to the policies, with minor exceptions. Some of these exceptions arose because interrogation policy did not always list every conceivable technique that an interrogator might use, and interrogators often employed techniques that were not specifically identified by policy, but nevertheless arguably fell within the parameters of FM 34-52. This close compliance with interrogation policy was due to a number of factors, including strict command oversight and effective leadership, adequate detention and interrogation resources, and GTMO's secure location far from any combat zone. And although conditions at GTMO were initially spartan, relying on improvised interrogation booths and pre-existing detention facilities (Camp X-Ray, constructed in the 1990s to house Cuban and Haitian refugees), these conditions continuously improved over time. The most important development was establishment in November 2002 of a command organization that placed detention and intelligence operations under the command of a single entity, JTF-GTMO, superseding the bifurcated organization which had at times impeded intelligence collection due to lack of proper coordination between interrogators and military police. JTF-GTMO, with its well-developed standard operating procedures and clear lines of authority, enabled effective coordination.

(U) In light of military police participation in many of the abuses at Abu Ghraib, the relationship between military police (MP) and military intelligence (MI) personnel has come under scrutiny. Under the GTMO model of MP/MI relations, military police work closely with military intelligence in helping to set the conditions for successful interrogations, both by observing detainees and sharing observations with interrogators, and by assisting in the implementation of interrogation techniques that are employed largely outside the interrogation room (such as the provision of incentives for cooperation). When conducted under controlled conditions, with specific guidance and rigorous command oversight, as at GTMO, this is an effective model that greatly

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CHART REFERENCE 5

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Interrogation techniques banned in Iraq

Tuesday, May 18, 2004 Posted: 1:28 PM EDT (1728 GMT)

BAGHDAD, Iraq (CNN) -- The U.S. military will not use certain prisoner interrogation techniques in Iraq following the Abu Ghraib prison scandal, Pentagon officials said Friday.

Among the tactics barred are sleep and sensory deprivation and keeping prisoners in stressful positions for periods of time.

According to the military, none of the tactics -- which required the approval of the commanding general before use -- had been requested in Iraq.

Gen. Ricardo Sanchez, commander of U.S. forces in Iraq, completed a review this week of approved interrogation techniques for detainees in Iraq, in the wake of concern and criticism that they violate the Geneva Conventions, two senior defense officials told CNN Friday.

Seven U.S. soldiers have been charged with abusing prisoners at Abu Ghraib prison near Baghdad. Three of the soldiers face general courts-martial arraignments Thursday, a session used for felony-level offenses. A fourth soldier faces a special court-martial -- the military equivalent of a civilian misdemeanor court -- on Wednesday.

On Capitol Hill on Thursday, top officials acknowledged some of the techniques under review could violate the Geneva Conventions.

Also Friday, the ranking U.S. military leader in Afghanistan announced changes at the main detainee camp at Bagram.

Lt. Gen. David Barno, who leads the Combined Forces Command in Afghanistan, confirmed he is "in the midst of putting out some new policy guidance" to underscore a mandate of "treating all of our detainees with dignity and respect."

Barno, speaking at a policy forum in Washington, said a newspaper's report of mistreatment of an Afghan police colonel in U.S. custody was the "first indication" he had of any problems among detainees.

He said the new policy guidance is intended to "make sure those rules are enforced across all our operations in Afghanistan."

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VIDEO

About 300 detainees are freed from Baghdad's Abu Ghraib prison.
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Spc. Jeremy Sivits has given U.S. officials a detailed statement describing instances of abuse at Abu Ghraib prison.
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An Army investigation is focusing on whether the military intelligence unit at Abu Ghraib encouraged abuse.
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Gallery: Abuse at Abu Ghraib prison (Contains graphic content. Viewer discretion advised.)

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He did not describe any shortcomings the new guidance will address.

Prisoners released

U.S. authorities released 293 prisoners Friday from the prison near Baghdad, the first mass prisoner release since images of abuse at the hands of the U.S. military surfaced several weeks ago.

Earlier, officials had said 315 prisoners were freed, but Brig. Gen. Mark Kimmitt said the release of 22 prisoners was delayed.

Kimmitt told reporters Friday that the next prisoner release will be next Friday.

"We anticipate 475 prisoners to be released. Twenty-two prisoners delayed today are expected to be released on May 21st," he said.

Hundreds of Iraqis gathered around the prison after hearing about the imminent prisoner release. The first bus, with about 70 released prisoners, left Abu Ghraib around 9:20 a.m. (1:20 a.m. ET) heading toward Baghdad. The other four buses emerged hours later -- one headed to Fallujah and the other three to Ba'qubah, coalition officials said.

About a week ago, there were about 3,800 prisoners at Abu Ghraib. The new U.S. commander of detention operations in Iraq, Maj. Gen. Geoffrey Miller, said he plans to reduce that number to somewhere between 1,500 and 2,000.

Miller took over for Brig. Gen. Janis Karpinski, who was relieved of duty on January 17, a day after the coalition military announced an investigation into abuse in the prison.

Seven soldiers face criminal charges in the abuse case, and four of them have been formally referred for court-martial. (Full story)

Photos of the abuse have prompted outrage -- particularly in the Arab world -- and led to days of hearings on Capitol Hill.

The Army has been investigating the treatment of prisoners at Abu Ghraib since January, but the case erupted last month when CBS broadcast graphic photographs of American troops posing for photographs with naked, hooded prisoners.

Defense Secretary Donald Rumsfeld has been criticized for not alerting the president and Congress sooner about the pictures.

Lawmakers are focusing on how high up the chain of command culpability for the abuse goes.

While Rumsfeld and other Pentagon officials have described the abuse as an aberration, some lawmakers have suggested in their questions that the military police -- who acted as guards for the prisoners -- may have been taking their cues from military intelligence.

The author of a military report on Abu Ghraib, Maj. Gen. Antonio Taguba, has also questioned the role of military intelligence at the prison. But he told a Senate panel Tuesday that there were no "direct orders" or written policies that sanctioned the abuse of prisoners.

CNN's Ed Henry, Joe Johns, Ted Barrett and Steve Turnham contributed to this report.

- Gallery: Soldiers charged
- Taguba: No direct order
- FindLaw: Taguba Report
- Timeline: Iraq abuse case
- Inhofe: Prisoners 'terrorists'
- Soldier's attorney disputes abuse claims

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between--and I understand this can be a slippery slope--detainees who may have general knowledge of enemy plans and detainees who we have reason to believe may have knowledge of an imminent terrorist operations?

I know that there are circumstances in the so-called ticking time bomb case, where in other countries which attempt to live by the rule of law the standards of what can--of the nature of an interrogation of a detainee, can be quite simply more aggressive if there is a conclusion, reasonably arrived at, that the detainee has knowledge of the allegorical ticking time bomb, and if you break that detainee you can stop the bomb from exploding.

Do our procedures now allow for those kinds of distinctions?

Admiral Church. I will try to answer that, sir. The policy, the doctrine, the approved interrogation techniques, would not change based on what you know the intelligence, the value of the intelligence of the detainee. What might change is the interrogation plan of how you approach that, how you might use techniques in combination to try to get the information you use, and each interrogation plan might be different.

I doubt that you would waste much time on somebody who was of little intelligence value, but you would probably spend a lot of time on somebody who had actionable intelligence that might save lives.

Senator Lieberman. Thank you, Admiral.

My time is up. Thanks, Mr. Chairman.

Chairman Warner. Thank you, Senator.

Senator McCain.

Senator McCain. Admiral, thank you for your report.

Are all of the interrogation techniques now in keeping with international law and with treaties that the United States of America is signatory to?

Admiral Church. Yes, sir.

Senator McCain. In your mind there is no doubt?

Admiral Church. There is no doubt in my mind.

Senator McCain. Is there in your mind a difference in the status of a Taliban prisoner who was captured in the war in Afghanistan and that of a terrorist who was apprehended in Omaha, Nebraska?

In other words, is the Taliban guy, fighter, eligible for the Geneva Conventions for the Treatment of Prisoners of War, and is the terrorist caught in Omaha eligible?

Admiral Church. The latter is. The first, as you remember from the President's----

Senator McCain. The latter is eligible for Geneva Conventions?

Admiral Church. A terrorist caught in the United States? Well, I am sorry----

Senator McCain. Is he eligible for----

Admiral Church. He is not a prisoner of war, so he would not fall into that category.

Senator McCain. Okay. Is the Taliban prisoner fighting for the then-government of Afghanistan eligible for Geneva Conventions for the Treatment of Prisoners of War?

Admiral Church. As you will remember, the President said that the Taliban had not conducted themselves in a manner that they would be considered parties to the Geneva. So the answer to your question is no, sir.

Senator McCain. So the President of the United States has

CHART REFERENCE 7

New York Times Article, Army Limits Tactics in Interrogations, April 2008

This article can also be accessed through our reference list (number 7), on our website, or by cutting and pasting the link below:

http://www.nytimes.com/2005/04/28/politics/in-new-manual-army-limits-tactics-in-interrogation.html?_r=3

CHART REFERENCE 8

SUMMARY OF FINDINGS & RECOMMENDATIONS

(U) In this section I review my major findings and overarching recommendations. Specific findings and recommendations are included throughout the report.

NOTE ON APPLICABLE POLICY

(U) In my assessment of the specific allegations of abuse and CJSOTF-AP detention operations, I considered relevant regulatory and policy guidance, including:

- CJTF-7 FRAGO 749, controlling CJTF-7 policy regarding detention operations;
- CJTF-7 Interrogation and Counter-Resistance Policy memorandum, dated 12 October 2003[3];
- CJTF-7 Interrogation Policy memorandum, dated 14 September 2003 (rescinded);
- AR 190-8 and relevant provisions of the Geneva Conventions to provide minimum standards of humane treatment, incorporated into CJTF-7 policy by FRAGO 749.

These policies are discussed in detail in PART III.

MAJOR FINDINGS

[redacted]

2. ~~(S/NF)~~ CJSOTF-AP [redacted] operated six (6) tactical interrogation facilities: [redacted] These were not internment facilities, i.e. facilities intended for long-term detention, but rather temporary facilities to elicit tactical intelligence coincident to capture. These facilities at least met the minimum standards for tactical interrogation facilities, except as noted below. Only [redacted] facility remains in operation at this time.

[3] On 13 May 2004, the Commander of CJTF-7 issued a new CJTF-7 Interrogation and Counter-Resistance Policy. This new policy superseded the 12 October 2003 policy. The 13 May 2004 policy specifically prohibits the use of six interrogation techniques, including Sleep Management, Stress Positions, Change of Scenery, Dietary Manipulation, Environmental Manipulation, and Sensory Deprivation. In all other respects the 13 May 2004 policy is identical to the 12 October 2003 policy. Because the new 13 May 2004 policy was not in effect during the relevant time period preceding the initiation of this investigation and for the sake of clarity, the 12 October 2003 policy will be referred to as the controlling CJTF-7 policy throughout this report.

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HEADQUARTERS
MULTI-NATIONAL FORCE – IRAQ
BAGHDAD, IRAQ
APO AE 09342-1400

REPLY TO
ATTENTION
MNFI-SJA

27 Jan 05

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Multi-National Force-Iraq Policy 05-02 (Interrogation Policy) (U)

1. (U) References.

a. (U) CJTF-7 Memorandum, subject: Interrogation and Counter-Resistance Policy, 13 May 2004 (Superceded by this Memorandum).

b. (U) US Army Field Manual 34-52, Intelligence Interrogation, 28 September 1992.

c. (U) Geneva Conventions Relative to the Protection of Civilian Persons in a Time of War, 12 Aug 1949.

d. (U) Geneva Conventions Relative to the Treatment of Prisoners of War, 12 Aug 1949.

e. (U) UN Security Council Resolution 1546 (2004).

f. (U) Executive Order 12333.

2. (U) Purpose. This memorandum establishes the interrogation policy for all detained persons under the control of any unit under the command and control of Multi-National Force-Iraq (MNF-I). This memorandum supercedes reference a.

3. (FOUO) Applicability. This policy applies to all commands and organizations under MNF-I command, operational, or tactical control. It applies to and limits interrogations in interrogation facilities, tactical interrogations, and tactical questioning by units in the field. Finally, it applies to interrogations of MNF-I detained persons, even if conducted by other government agencies, non MNF-I commands and units, Iraqi government representatives, or in any other circumstance. Non-US coalition forces will comply with their own national guidelines provided that they are not less restrictive than this policy.

4. (U) Policy. All interrogations and tactical questioning will comply with the applicable provisions of the Law of War, the Geneva Conventions, and with US policy, which require us to treat all persons humanely and with dignity and respect. This policy also expressly prohibits acts of violence or intimidation and physical or mental torture. Humiliation is a violation of the

Classified by: Cdr, MNF-I
Reason: 1.4(a) and (c)
Declassify on: January 27, 2015

Geneva Conventions and is therefore prohibited. Threats, insults, and exposure to inhumane treatment as a means of or aid to interrogation are not authorized and will not be condoned.

a. (FOUO) Multi-National Force-Iraq interrogations ordinarily should take place within a fixed facility, such as the Theater Interrogation Facility, approved Brigade or Division Interrogation Facilities, the Joint Interrogation and Debriefing Center (JIDC) or an authorized co-use Iraqi government facility.

b. (FOUO) When authorized in accordance with procedures outlined in Enclosure 1, subordinate units are authorized to conduct tactical interrogations outside of fixed facilities using Human Intelligence or interrogation trained personnel at brigade level and below.

c. (U) All MNF-I interrogations will employ the general and specific safeguards listed in Enclosure 1.

d. (U) Multi-National Force-Iraq personnel are prohibited from circumventing this policy through the use of agents who are not bound by the policy. Personnel who receive information that they believe was obtained in ways that would, if used by MNF-I personnel, violate this policy shall report their beliefs and the underlying circumstances immediately to their chain of command.

e. (FOUO) Only the interrogation approaches contained in Enclosure 2 are approved for use in accordance with this policy. See paragraph 11 for handling requests for exceptions.

f. (FOUO) Segregation of detained persons will only be authorized as described in Enclosure 3.

5. (U) Dissemination. Commanders will ensure dissemination of this policy and appropriate policy implementation at all levels of command that conduct tactical questioning, interrogations, and debriefing of detained persons. Subordinate units will report completion of dissemination and the conformance of subordinate command policies and procedures to the Commanding General no later than seven days from the date of this policy memorandum.

6. (U) Detained Persons. Throughout this policy memorandum, the term "detained person" refers to security internees, criminal detainees, and enemy prisoners of war (EPW). For purposes of this policy, security internees and criminal detainees are defined as civilians who are detained pursuant to Articles 5 and 78 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (hereinafter GC IV), and United Nations Security Council Resolution 1546 (2004) (UNSCR 1546). Enemy prisoners of war are military or militia personnel captured and held under Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (hereinafter GC III), and UNSCR 1546.

7. (S/REL) Combined MNF-I and Iraqi Interrogations. Combined MNF-I and Iraqi Interrogations require submission and approval of an Interrogation Concept of the Operation to the MNF-I Deputy Chief of Staff for Intelligence (DCSINT) prior to conducting the interrogation operation. Combined MNF-I and Iraqi interrogation or bilateral Human Intelligence (HUMINT) collection efforts require all participants to adhere to the guidance of this policy. Any exceptions to this policy requirement must be approved in writing by the Commanding General, MNF-I, or his designee.

8. (U) Certification and Training of Interrogators.

a. (FOUO) Certification. Only trained military intelligence personnel, other qualified government interrogators, and trained contractors working under the supervision of military intelligence personnel are authorized to conduct interrogations. Personnel need not be certified interrogators to use the direct approach as part of tactical questioning as provided in Enclosure 1, paragraph 2.j. and Enclosure 2, paragraph 1.a.

b. (U) Indoctrination. Before conducting their first interrogation in theater, each interrogator will undergo a left-seat, right-seat procedure with an interrogator experienced in conducting interrogations under this policy. For unit rotations, this procedure shall be incorporated into the RIP/TOA process.

c. (U) Sustainment Training. Unit Commanders will develop and conduct sustainment training so that each interrogator receives training at least once every 90 days on the following: this policy, unit SOPs and implementing policies, the 1949 Geneva Conventions, the use of authorized approaches, and interrogation plan development and implementation.

9. (U) Good Order and Discipline. Nothing in this policy limits existing command authority for maintenance of good order and discipline among persons under MNF-I control.

10. (U) Compliance. Deputy Commanding General (Detainee Operations) (DCGDO) will verify compliance with this policy by all MNF-I units and commands. Deputy Commanding General (Detainee Operations) and the DCSINT will employ a system of periodic inspections and other mechanisms and coordinate inspections of MNC-I units with Commander, MNC-I.

11. (S/REL) Exceptions to Policy for Approaches. Only the approaches contained in Enclosure 2 are approved for use in accordance with this policy. I will consider for approval at my level only additional approaches that comply with the limitations of the doctrine in FM 34-52 (reference b).

a. (S/REL) Commanders requesting exceptions to policy will submit written requests for additional approaches to include a description of each proposed approach and recommended safeguards through the DCSINT and the SJA, MNF-I, for written technical and legal review prior to staffing through the DCGDO for submission to Commander, MNF-I. All approvals will

be documented in writing. The Commander requesting such an exception will be responsible for maintaining all paperwork associated with such a request, to include copies of the requests and records of approvals or denials.

b. (S/REL) Any requests for approaches that exceed the limitations of FM 34-52, reference b, require approval by Commander, US Central Command, or higher authority. A copy of all such approvals applicable to commands and organizations under MNF-I command or operational or tactical control will be provided to and maintained by the DCGDO and SJA.

c. (S/REL) Under no circumstances will the following interrogation techniques be approved or utilized: sleep management, stress positions, diet manipulation, environmental manipulation, removal of clothing, or sensory deprivation. Military working dogs will not be used for, or be present during, interrogations.

12. (U) Violations of this Policy. Commanders are responsible for ensuring that all interrogations and tactical questioning are conducted in accordance with this policy. Suspected or alleged violations will be reported through the chain of command and intelligence oversight channels to Commander, MNF-I, appropriately investigated, and if appropriate, referred to competent authority for criminal investigation and disposition. Commanders will report through command channels the final disposition of cases involving violations of this policy. Suspected or alleged violations may also be reported through other appropriate military officials, such as criminal investigators, Inspectors General, Chaplains, or Judge Advocates.

13. (U) Point of contact for this memorandum is COL Charvat, DSN 318 822-2502.

GEORGE W. CASEY, JR.
General, USA
Commanding

3 Encls
1. Safeguards
2. Approaches
3. Segregation

DISTRIBUTION:
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CF:
Commander, US Central Command

MNFI-SJA
SUBJECT: Multi-National Force-Iraq Policy 05-02 (Interrogation Policy) (U)

ENCLOSURE 1: Safeguards

1. (U) General Safeguards. General safeguards are essential in conducting interrogation operations and include the following:

a. (FOUO) Proper task organization and resources are required before conducting interrogation operations. Trained interrogation personnel are the only personnel authorized to implement interrogation approaches with the exception of the "Direct" approach. Interrogation operations rely on proper screening to determine whether the detained person possesses information of intelligence value and to determine whether the detained person is medically fit for the proposed interrogation plan. To safely execute the interrogation plan, Standing Operating Procedures (SOPs) must include reasonable safeguards, limits on duration, termination criteria, the presence or availability of qualified medical support, required supervision, security personnel/Military Police (MP), and command presence.

b. (S/REL) Interrogations are always planned, deliberate actions that take into account factors such as a detained person's current and past responses in both detention and interrogation, a detained person's strengths and weaknesses, assessment of approaches and individual techniques that may be effective, and relative capabilities of interrogators. Successful interrogation requires the interrogator to take the initiative, gain control, and employ approach strategies that leverage cooperation, and ultimately establish a baseline rapport. Therefore, interrogators must always be in control of the interrogation. In demonstrating this control, interrogators may not deprive a detained person of services, support, or other conditions that are required for humane treatment under the Geneva Conventions or other law. Everything the interrogator says and does must be within the limits of this policy, the Geneva Conventions, the Law of War, and other US policy. It is important that interrogators be allowed reasonable latitude to vary approved approaches depending on the detained person's cultural background, strengths, weaknesses, environment, and extent of resistance training.

c. (S/REL) Interrogation approaches are designed to manipulate the detained person's emotions and weaknesses to gain willing cooperation. Especially critical is the requirement that these approaches be used only in accordance with this policy, the doctrinal guidance of FM 34-52 (reference b), and any implementing locally approved SOPs. While approaches are considered individually within the interrogation planning phase, it must be understood that in practice, approaches are usually used in combination and may include multiple interrogators. The cumulative effect of all approaches to be employed must be considered before any decision is made regarding approval of a particular interrogation plan.

d. (FOUO) Security personnel/MP and other detaining units will not actively participate in interrogations. Their involvement with interrogations is strictly limited to passive intelligence gathering, such as reporting on conversations that are overheard, noting mood, leadership, and group dynamics. Security personnel/MP and other detaining units may not interrogate detained

persons. Security personnel/MP and other detaining units are permitted to ask direct questions in the course of daily duties with detained persons for the purpose of in-processing, safety, security, and administration. Detaining units must also ensure that detention regulations, SOPs, and policies are not in conflict with the interrogation policies of the intelligence collection unit. The unit's servicing Staff Judge Advocate (SJA) will review all SOPs prior to implementation. This will help maximize the credibility of the commands conducting detainee operations, the effectiveness of the interrogation operations, and ensure compliance with law and policy. Strict adherence to such regulations, policies, and SOPs is essential to conducting safe and effective interrogation operations.

e. (FOUO) Detainee medical information will be protected in accordance with all applicable laws and regulations. Routine detainee healthcare is separated from interrogation operations. Healthcare providers engaged in daily healthcare for detained persons will not be required to verbally provide detainee medical information to intelligence collectors. This applies to all agencies conducting interrogations. Medical personnel shall provide interrogators such information as they believe necessary to protect the health and safety of the detainee or to prevent the commission of a crime.

2. (U) Specific Safeguards. These specific safeguards must be applied whenever interrogations using the approaches in Enclosure 2 are undertaken.

a. (FOUO) Commanders conducting detainee operations will ensure that detained persons are allowed adequate sleep and that diets provide adequate food and water as required by the Geneva Conventions and cause no adverse medical effects, taking into account the detainee's cultural diet. Where segregation is necessary and properly authorized, detained persons must be monitored for adverse physical or mental reactions. Approaches must in no way endanger the detainee. An interrogation plan must be developed and approved for each interrogation that includes reasonable safeguards, limits on duration, an assessment of the detainee, termination criteria, and provisions for qualified medical personnel to be present or available. Interrogation approaches may only be used by specifically trained interrogation personnel (with the exception of the "Direct" approach as discussed in enclosure 2).

b. (U) Prior to conducting an interrogation, there must be a reasonable basis to believe that the detained person possesses information of intelligence value.

c. (U) Detained persons selected for interrogation must undergo a medical exam or assessment before the beginning of interrogation. The exam or assessment will record the physical and medical condition of the detainee and ensure the detainee is medically cleared to undergo interrogation.

(1) (U) At theater-level internment facilities, a medical exam is required upon entry into the facility. If the start of interrogation must be delayed beyond 14 days after the initial medical

exam, an additional medical assessment must be conducted prior to interrogation. At division-level and below, a medical assessment must be conducted prior to the start of interrogation.

(2) (FOUO) No interrogation of hospitalized (in-patient) detained persons may be conducted without first obtaining the approval of DCGDO / Commander, TF 134, in consultation with the Chief of Medical Staff (DCCS) at the hospital. Requests for approval must be submitted in writing and be reviewed by the servicing Staff Judge Advocate.

(3) (U) The requirement for a medical exam or assessment does not prohibit tactical questioning or acceptance of information voluntarily provided prior to a medical exam.

d. (U) Medically trained personnel must be available within the interrogation facility and together with security personnel and interrogators are responsible to the commander for ensuring the health and safety of interrogation subjects.

e. (U) Interrogation of wounded personnel will not delay or interfere with the evacuation of wounded personnel to the appropriate level for medical care.

f. (S/REL) A Behavioral Scientist (BSCT), when assigned to an interrogation case, is in an advisory role to the interrogation operations officer. A BSCT is not authorized to lead interrogations or to function in the role of or in lieu of an interrogation operations officer.

g. (FOUO) All interrogations must be monitored and supervised by leaders. A leader's monitoring may be assisted by the use of closed circuit television.

h. (FOUO) Except as provided below for tactical interrogations and tactical questioning, all MNF-I interrogations must take place within a fixed facility, such as the Theater Interrogation Facility, approved Brigade or Division Interrogation Facilities, the Joint Interrogation and Debriefing Center (JIDC) or an authorized co-use Iraqi government facility.

i. (FOUO) Tactical interrogations outside fixed facilities are conducted when the combat situation requires immediate actionable intelligence. In this event, skilled HUMINT personnel will be attached temporarily to committed units to conduct the tactical interrogations. Such interrogations are brief and concerned only with information of an imminent threat nature usually supporting the combat mission of the detaining unit (reference b). Tactical interrogations take advantage of the psychological effects of the "shock of capture" and provide invaluable intelligence information and timely targeting information. These interrogations also serve to assist with detention screening at the scene and maximize the intelligence value of detained persons held by MNF-I. Units are authorized to conduct tactical interrogations using HUMINT or interrogation trained personnel at brigade and below when authorized by the first O6 Commander in the chain of command in accordance with the general and specific safeguards discussed in this enclosure.

j. (U) Tactical questioning is employed when interrogator support is unavailable. The purpose of tactical questioning is to obtain combat information of immediate use to the unit commander. When authorized by the unit commander, and in accordance with these procedures, subordinate units are authorized to conduct tactical questioning when HUMINT or interrogation trained personnel are not available at brigade and below. In addition to the general and specific safeguards discussed in this enclosure, the following additional safeguards must be observed:

(1) (U) Only the interrogation technique Direct Approach, discussed in Enclosure 2, may be employed in tactical questioning.

(2) (U) Unit commanders will ensure that individuals engaging in tactical questioning have received training on this policy as well as any pertinent local SOPs.

MNFI-SJA
SUBJECT: Multi-National Force-Iraq Policy 05-02 (Interrogation Policy) (U)

ENCLOSURE 2: Approaches

1. (S/REL) The specified interrogation approaches described below are approved. They must be used in combination with the general and specific safeguards in enclosure 1. Subordinate commanders are encouraged to provide additional consistent implementation guidance and add more specific local safeguards in their SOPs. No additional approaches are approved or are to be used. A more detailed description of the tactics, techniques, and procedures applicable to these approaches may be found in FM 34-52 at the pages indicated following each approach.

a. (FOUO) Direct Approach: The interrogator asks questions directly related to the information sought, making no effort to conceal the interrogator's purpose. The direct approach, always the first to be attempted, is used on detained persons who the interrogator believes will cooperate. This is the only interrogation approach approved for tactical questioning at the brigade level or below. (FM 34-52, p. 3-14)

b. (S/REL) Incentive/Removal of Incentive Approach: Providing a reward or removing a privilege, beyond those required by the Geneva Convention. Possible incentives may include favorite food items or regional comforts not required by the Geneva Convention. Any denial of basic human needs under any circumstances is prohibited. Note: Interrogators may not withhold a source's rights under the Geneva Conventions, but can withhold a source's privileges. Granting incentives must not infringe on these rights, but they can be things to which the source is already entitled. This can be effective only if the source is unaware of his rights or privileges. (FM 34-52, p. 3-14)

c. (S/REL) Emotional Approach: Through EPW or detainee observation, the interrogator can often identify dominant emotions which motivate. The motivating emotion may be greed, love, hate, revenge, or others. The interrogator employs verbal and emotional ruses in applying pressure to the EPW's or detainee's dominant emotions. (FM 34-52, p.3-14)

(1) (S/REL) Emotional Love Approach: Playing on the love a detained person has for family, homeland, or comrades. This may involve an incentive, such as allowing communication with the individual or group. (FM 34-52, p. 3-15)

(2) (S/REL) Emotional Hate Approach: The emotional hate approach focuses on any genuine hate, or possibly desire for revenge, the source may feel. (FM 34-52, p. 3-15)

d. (S/REL) Fear-Up Approach: The fear-up approach is the exploitation of a source's preexisting fear during the period of capture and interrogation. This approach has the greatest potential to violate the law of war. Accordingly, great care must be taken to avoid threatening or coercing a source in a way that is violative of laws and regulations. The fear up approach can be either harsh or mild. (FM 34-52, p. 3-15)

(1) (S/REL) Fear-Up (Harsh): In this approach, the interrogator behaves in an overpowering manner with a loud and threatening voice in order to convince the source he does indeed have something to fear; that he has no option but to cooperate. (FM 34-52, p. 3-16)

(2) (S/REL) Fear-Up (Mild): Moderately increasing the fear level in a detained person, usually by helping the source realize the unpleasant consequences his situation may cause and by presenting an alternative, which, of course, can be brought about by answering some simple questions. (FM 34-52, p. 3-16)

e. (S/REL) Fear-Down Approach: Reducing the fear level in a detained person by nothing more than calming the person and convincing him that he will be properly and humanely treated. This often creates rapport and usually nothing else is needed to get the person to cooperate. (FM 34-52, p. 3-16)

f. (S/REL) Pride and Ego-Up: Flattering or boosting the ego of a detained person. The strategy of this approach is to trick the source into revealing desired information by flattering him. It is usually effective with sources who have displayed weakness or feelings of inferiority. (FM 34-52, p. 3-17)

g. (S/REL) Pride and Ego-Down: This approach is based on attacking the source's sense of personal worth. Any source who shows any real or imagined inferiority or weakness about himself, loyalty to his organization, or if captured under embarrassing circumstances, may be made to talk quite easily with this technique. The objective is for the interrogator to pounce on the source's sense of pride by attacking his loyalty, intelligence, abilities, leadership qualities, slovenly appearance, or any other perceived weakness. (FM 34-52, p. 3-18)

h. (S/REL) Futility: Invoking the feeling in a detained person that resistance to questioning is futile by playing on the doubts that already exist in his mind. (FM 34-52, p. 3-18)

i. (S/REL) We Know All: Convincing a detained person that the interrogator already knows the answers to questions being asked. (FM 34-52, p. 3-19)

j. (S/REL) File and Dossier: Convincing a detained person that the interrogator has a voluminous, damning and inaccurate file, which must be corrected by the detained person. (FM 34-52, p. 3-19)

k. (S/REL) Establish Your Identity: Convincing the detained person that the interrogator has mistaken the detained person for someone else. The detained person is encouraged to "clear his name." (FM 34-52, p. 3-19)

l. (S/REL) Repetition: Continuously repeating the same question to the detained person during an interrogation to encourage full and candid answers to questions. (FM 34-52, p. 3-20)

m. (S/REL) Rapid Fire: Questioning in rapid succession without allowing the detained person to answer questions fully in order to create inconsistencies or confusion that can lead to further exploitation. (FM 34-52, p. 3-20)

n. (S/REL) Silent: Staring at the detained person to create an atmosphere of discomfort. (FM 34-52, p. 3-20)

o. (S/REL) Change of Scene: Includes strategies of disguise and meeting in a relaxing atmosphere not associated with interrogation and employing elicitation skills as opposed to interrogation. Some examples of this strategy include conducting an interrogation in a nicely furnished room and having a pleasant conversation over coffee, or presenting the interrogator as a member of internment facility staff as opposed to an interrogator. (FM 34-52, p. 3-20)

2. (FOUO) Commanders will submit written requests for additional approaches through the DCSINT and the DCGDO to Commander, MNF-I. The request for exception to policy must include a description of the proposed approach and recommended safeguards. The DCSINT will provide staff input on the recommendation and a legal review from the SJA, MNF-I, will accompany each request. All approvals will be documented in writing. The interrogation facility requesting such an exception will be the repository for all paperwork associated with such a request, to include copies of the requests and records of approvals or denials. Any requests for approaches that exceed the limitations of FM 34-52, reference b, require approval by Commander, USCENTCOM or higher authority.

3. (S/REL) Under no circumstances will the following interrogation techniques be approved or utilized: sleep management, stress positions, diet manipulation, environmental manipulation, removal of clothing, or sensory deprivation. Military working dogs will not be used for, or be present during, interrogations.

ENCLOSURE 3: Segregation

1. (U) Definition. "Segregation" is the temporary physical separation of detained persons from other detained persons in order to prevent direct communications. Segregation is not an interrogation approach. The permissible duration and purposes of segregation are discussed below. This enclosure is not applicable when segregation is directed as a disciplinary measure.

2. (U) Purposes of Segregation.

a. (U) Interrogation segregation of detained persons ensures the success of interrogations by preventing the sharing of interrogation methods among detained persons.

b. (FOUO) When making the decision to segregate, commanders must weigh the need to segregate against the detained person's right to communication pursuant to the Geneva Conventions. For EPWs, this right to communicate is expressed in Chapter XIII, Section V of GC III (reference d). For Security Internees, this right to communicate is expressed in Chapter VIII of GC IV (reference c). When making this decision, the commander should seek advice from his servicing Judge Advocate. Commanders retain the authority to segregate for reasons of good order and discipline.

c. (FOUO) The place and conditions of detention for segregated detained persons are to be of a similar standard to the facilities housing non-segregated detained persons. Interrogation segregation is not punishment. At a minimum, the place of segregation must allow the detainee to stand straight and sleep prone, and the environmental quality must be reasonably controlled to protect the health and safety of the detainee.

3. (FOUO) Approval Authorities. The following personnel may direct segregation of detained persons for purposes of interrogation for the number of days indicated. When computing the number of days in the following paragraphs, do not include any days in segregation mandated by the commander for reasons of good order and discipline.

a. (S/REL) The JIDC Director and O6-level commanders are the approval authority for immediate segregation of persons of "intelligence value" for up to seven days at MNF-I interrogation facilities.

b. (S/REL) The first general or flag officer in the chain of command may approve segregation up to and including fourteen days in duration. This authority may also be delegated, in writing, to O6-level commanders at division or brigade level, or at other detention facilities.

c. (S/REL) After fourteen days, the first general or flag officer in the chain of command may approve additional segregation totaling up to and including thirty days in duration.

d. (S/REL) Only Commander, MNF-I, or his delegee, may approve segregation in cases where such segregation will exceed thirty days in duration. Submit written requests with supporting rationale to Commander, MNF-I, through the DCSINT and the DCGDO /Commander, TF 134. A legal review from the SJA, MNF-I, must accompany each request.

CHART REFERENCE 10

Full Release

COMBINED FORCES COMMAND - AFGHANISTAN
KABUL, AFGHANISTAN
APO AE 09358

CFC-A

15 May 2004

GENERAL ORDER NUMBER 2 (GO 2) DETAINEE PROCEDURES IN COMBINED FORCES COMMAND AFGHANISTAN (CFC-A)

STATEMENT OF MILITARY PURPOSE AND NECESSITY: The citizens of Afghanistan remain CFC-A's center of gravity. CFC-A personnel have a responsibility to treat all Afghani citizens with utmost respect and courtesy. This moral and legal obligation as a member of the United States and Coalition armed forces is necessary to ensure the partnership of the Afghani people in CFC-A's counterinsurgency campaign. The requirements set forth in paragraphs 2 and 3 are essential to preserving U.S. / Host Nation (HN) relations, combined operations between U.S. and friendly forces, and to maintain good order and discipline and protect human rights within the CFC-A AOR. This General Order Number 2 underscores conduct which is prejudicial to the maintenance of good order and discipline of CFC-A forces and ensures the appropriate level of policy uniformity throughout the CFC-A AOR.

AUTHORITY: Title 10, United States Code, Section 164 (c) and the Uniform Code of Military Justice (UCMJ), Title 10 United States Code, Sections 801-940.

1. APPLICABILITY: This General Order Number 2 is applicable to all United States (U.S.) military personnel; all U.S. civilians serving with, employed by, or accompanying the Armed Forces of the United States; and all Coalition Forces while present anywhere in the CFC-A AOR. All alternative or less restrictive guidance with regard to detainee and PUC handling in Combined Joint Operating Area-Afghanistan are hereby revoked. JSOTF forces and all forces operating under CFC-A command in CJOA-A will fully comply with the letter and intent of this policy. All CFC-A military and civilian personnel will be briefed on this order NLT 1 Jun 04. This order supplements USCENTCOM General Order Number 1A and CFC-A General Order Number 1. This General Order Number 2 reflects the fact that the Afghan people remain the center of gravity of our operations, and that we remain guests in their country as we conduct a counter-insurgency campaign in partnership with them.

2. GENERAL REQUIREMENTS:

a. All detainees collected as a result of Coalition operations in Combined Joint Operations Area-Afghanistan (CJOA-A) will be treated with dignity and respect. Any potential intelligence value from detainees will remain subordinate and secondary to treating all detainees with dignity and respect.

c-5

b. All detainees will be considered as potential supporters of the Afghan Transitional Authority (ATA) and the Coalition until substantial evidence is clearly established otherwise. Treatment of detainees will reflect this characterization at all times.

3. REQUIREMENTS / PROHIBITED ACTIVITIES: The specific requirements and prohibited activities listed in this document supplement and are in addition to those activities specifically proscribed by USCENTCOM General Order 1A and CFC-A General Order 1.

a. Detainees will not be held at remote detainment sites for processing beyond 96 hours from time of detainment. Exceptions to this rule require COMJTF 76 approval at the Major General level, and is non-delegable. Under no circumstances will detainees be held outside the Bagram Collection Point (BCP) cumulatively beyond one week (168 hours). Detainees who exceed this time limit will be unconditionally released, unless COMCFC-A personally determines otherwise.

b. Intelligence questioning of detainees will be conducted strictly IAW the Geneva Conventions. Physical abuse of any type, any form of intentional humiliation, verbal abuse, or deprivation of sleep, food or water are explicitly forbidden. Intelligence value remains secondary to treating all detainees humanely with a view to their ultimate release and reconciliation as a part of Afghanistan's future.

c. Detainees will not be completely stripped of their clothing at any time, with particular consideration given to Muslim sensitivities with regard to covering of private parts. Private parts will always remain covered for all detainees. Security wand type devices will be used to insure detainees are not concealing weapons or other dangerous items in areas that remain covered. Body cavity searches will not be performed unless security wand evidence indicates the presence of concealed items.

d. Restraints on detainees will be the minimum required by the tactical situation and threat. Hoods will not be used. Blindfolds consisting of bandages, goggles or like items are permissible for limited periods of time to maintain operational security. Blindfolds will never be used to disorient detainees or deny light over extended periods. Flexcuffs will be used for limited periods only when detainees are judged a threat to Coalition forces.

e. Photography will only be allowed to record the identity of detainees while fully clothed. Detainees who become Persons Under Control (PUCs) may be photographed over their exposed body less private parts to establish a record of scars, pre-existing injuries, identifying marks, etc. At no time will the dignity of the individual be compromised.

f. Any required medical examination of a detainee will be accomplished at the BCP only. Exceptions will only be made in the event of obvious injury requiring immediate medical aid. Medical attention will never be denied, but medical exams

beyond immediate treatment needs of the detainee will be restricted to the BCP only.

g. Detainees undergoing medical exams at the BCP will be fully informed of the purpose and nature of the exam in a language they understand. All medical procedures will be fully explained prior to initiation.

h. Interrogations will be conducted by trained and certified military intelligence personnel only. Additional CJOA-A-wide certification training of all in-country military intelligence interrogators will be completed under CJTF-76 control NLT 15 Jun 04 with update reports to CFC-A when accomplished. The concept of using other elements (e.g. military police, guards) to "soften up" detainees prior to interrogation is absolutely prohibited. No interrogation techniques will take precedence over treating all detainees with dignity and respect.

i. All individuals participating in questioning detainees are prohibited from concealing their identities from the detainees being questioned, to include by wearing masks, causing the detainee to be blindfolded or in the dark during interrogations, or by concealing themselves in any other way.

j. Interpreters interacting with detainees will be trained and counseled on their duties to set a proper tone of professionalism, dignity and respect during all interactions with detainees. Laughter, taunting, seeking detainee embarrassment or humiliation as a form of leverage is absolutely prohibited. Coalition soldiers and leaders will be held accountable for the demeanor and performance to standards of their interpreters. Frequent cross-checks of interpreter translation are required.

k. Photography of detainees, holding facilities, interrogations, and the BCP are expressly forbidden except as noted above for identity and documentation purposes. Personal possession of cameras or photography equipment of any type is prohibited on the grounds of any detainee holding or transfer facility. Detainees will not be photographed by service members or civilians during the course of any military operations at any time.

4. PUNITIVE ORDER: Paragraph 3 of this General Order Number 2 is punitive. Persons subject to the UCMJ may be punished thereunder. Civilians serving with, employed by, or accompanying the Armed Forces of the United States in the CFC-A AOR may face criminal prosecution or adverse administrative action for violation of this General Order.

5. INDIVIDUAL DUTY: All persons, military and civilian, subject to this General Order Number 2 are charged with the individual duty to become familiar with and respect the laws, regulations, and customs of Afghanistan insofar as they do not interfere with the execution of their official duties. Acts of disrespect or violations of Afghan law, regulation or customs may be punished under applicable criminal statutes and administrative regulations.

6. UNIT COMMANDER RESPONSIBILITY: Commanders, Security Assistance Office Chiefs, and military/civilian supervisors are charged with ensuring that all personnel are briefed on the prohibitions and requirements of this General Order Number 2. Commanders and supervisors are expected to enforce both the letter and the spirit of this General Order.

7. EFFECTIVE DATE / EXPIRATION: This General Order is effective immediately and will expire only when rescinded by Commander, Combined Forces Command – Afghanistan or higher authority.

DAVID W. BARNO
Lieutenant General, USA
Commanding

CHART REFERENCE 11

Camp Delta Standard Operating Procedures (SOP)

Headquarters,
Joint Task Force - Guantanamo (JTF-GTMO)
Guantanamo Bay, Cuba
1 March 2004

Chapter 1↑
Introduction

1-1. Purpose

a. This standard operating procedure (SOP) provides policy, procedures, and responsibilities for the security, administration, and treatment of detainees in custody at Camp Delta. This SOP also establishes procedures for transfer or release of custody from Camp Delta.

b. This SOP is consistent with the intent and spirit of the Geneva Conventions for the Protection of War Victims, dated 12 August 1949, in accordance with directives from the National Command Authority (NCA) and chain of command.

c. All personnel will enforce all orders and regulations pertaining to the daily operation of the facility and their assigned posts. Further, all personnel will be familiar with all facility directives, emergency plans and all post and special orders pertaining to their post; carry out all general orders for a sentry on post, and wear the prescribed uniform of the day.

d. This policy is punitive in that a violation of any provision of this policy may provide a basis for appropriate administrative or judicial/disciplinary action under the Uniform Code of Military Justice (UCMJ), or appropriate military/civilian personnel regulations, ejection from Camp Delta, and/or denial of entry.

e. All personnel will sign a statement of understanding/acknowledgement that they have read and will adhere to the provisions of all SOPs for Camp Delta.

1-2. Minor SOP Modifications

a. Any personnel may send suggestions for improvement of the SOP through their chain of command to the JDOG S-3.

b. Minor revisions will be made in a memorandum format, appropriately staffed, and approved by the CJDOG.

c. Copies of memorandums will be distributed and placed in the front of all SOP books.

d. SOPs may be modified through a Guard Mount message. JDOG S-3 must approve these messages prior to their release.

e. The SOP will be reviewed every 30 days to incorporate any changes. Submit all suggested changes in procedures for operations electronically to JDOG S-3 to include the following:

(1) Name of the submitter

(2) Date of submission

(3) If a modification, the current verbiage along with the chapter and paragraph of the text in the SOP. "N/A – addition to SOP"

(4) The new verbiage of the addition or modification to the SOP. "Add Koran to the list of inbound items contained in paragraph 4-20a."

(5) The reason why this change should be made such as "CG has directed all inbounds will now have Korans".

f. No SOP modification is valid unless approved by CJDOG or in an approved Guard Mount message. The memorandum or guard mount message must state that it is a modification to the SOP.

g. The JDOG Detention Services Branch (DSB) will file a copy of all Guard Mount messages approved. This file will be used to update the SOP during the revision process. After the Guard Mount message is included in the SOP through rewrite, it will be placed in a separate file of items included in the SOP.

h. Each manned position will train on or become familiar with one chapter per shift until the SOP has been reviewed.

(1) Verification will be monitored by a signature roster that is turned into the SOG and forwarded to the respective company's training NCO for documentation.

(2) To ensure that each chapter is read and studied, a specific chapter will be assigned to the manned position.

(3) The roster will ensure that each individual has read, studied, reviewed and become familiar with the prescribed chapter.

(4) Training NCOs will ensure all soldiers are familiar with the SOP.

(5) SOP training will be conducted with or instead of regular block training as determined by the block NCO for that shift.

(6) The block NCO must inform SOG of their intention to train on the SOP in lieu of regular block training for documentation purposes. The SOG will then inform the CO as to each block's intent to train on what task for that specific shift.

1-3. References Appendix

"A" lists required and related publications along with prescribed and referenced DOD and DA forms. Appendix "B "contains all local forms.

1-4. Explanation of Abbreviations and Terms

The glossary explains abbreviations and special terms used in this SOP.

1-5. JDOG Mission and Commander's Intent

a. The Joint Detention Operations Group (JDOG) conducts detention and area security operations in assigned sector of the Joint Operational Area (JOA) in support of intelligence operations in the Global War on Terrorism (GWOT).

b. The JDOG Commander's (CJDOG) intent is to conduct detention and security operations with

emphasis on force protection, humane treatment of detainees, and an aggressive mobile defense in sector. Conduct detention operations in a manner that supports the intelligence gathering efforts of the Joint Interrogation Group (JIG), the Criminal Investigation Task Force (CITF), and the Counter-Terrorism Cell (CTC) while providing for the safety, security and care of the detainees. Assigned/attached security forces provide the external security necessary to detect, deter, and defend against enemy sabotage, surveillance, and attack. End state is an efficiently run detention facility, a secure operating environment, and a force protection posture that provides for the safety and security of all service members, civilian personnel, and detainees.

1-6. Responsibilities

a. Commander, Joint Detention Operations Group (CJDOG) will:

(1) Be responsible for all facets of the operation of Camp Delta and outlying detention facilities, and all facility-related administrative matters.

(2) Ensure detention operations meet with the principals of the Geneva Convention and the intent of the Commander-In-Chief (CINC) and Commander, Joint Task Force-Guantanamo (CJTF).

(3) Support and improve the intelligence gathering process with all those who have contact with detainees.

(4) Provide effective liaison with the ICRC within the limits of military necessity.

b. Subordinate Unit Commanders, JDOG. The commander will:

(1) Train all assigned personnel on this SOP within 72 hours of assignment.

(2) Conduct SOP refresher training at least every three months thereafter, and whenever any portion is changed.

(3) Ensure all assigned personnel carry the "US SOUTHCOM Human Rights Standing Orders" card on them at all times.

(4) Ensure all assigned personnel carry the "JTF-GTMO ROE/RUF" card on them at all times.

c. All personnel entering Camp Delta. All military and civilian personnel assigned to, having access to, or working at Camp Delta or other JTF-GTMO detention facilities are required to read and adhere to the standards set forth in this SOP.

d. Contractor and Vendor Personnel. Contractor and vendor personnel will:

(1) Strictly comply with the rule against bringing prohibited items into or out of Camp Delta or other JTF-GTMO detention facilities.

(2) Never communicate in any manner with any detainee.

(3) Ensure that workers properly clean the work area to preclude leaving any debris or material that might be taken and modified into a weapon.

1-7. U.S. Personnel Standards of Conduct

a. Personnel assigned to JDOG will familiarize themselves with the references and comply with them and other related regulations in letter and spirit. The following will govern the conduct of all personnel assigned to JDOG or working within the confines of Camp Delta or other JTF-GTMO detention facilities.

(1) Security Mission. Security is the primary mission of all personnel who work at Camp Delta or other JTF-GTMO detention facilities, regardless of job, military occupational specialty (MOS), section, or office. All personnel will be alert for security violations or discrepancies and immediately report any unusual, questionable incidents, or observations to their immediate supervisor. Supervisors will report all violations to the Detention Operations Center (DOC) and/or JDOG S3.

(2) Humane Treatment. Treat detainees humanely. Abuse, or any form of corporal punishment, is prohibited. Verbal harassment, interrogation except by proper authority, and the imposing of physical exercise as punishment is prohibited.

(3) Professionalism. Maintain a fair, firm, impartial, and professional demeanor toward detainees at all times.

(4) Use of Force. Personnel will not strike nor lay hands upon a detainee except in self-defense, to prevent a serious injury to a person or damage to property, to quell a disturbance, or for purposes of escorting, properly restraining, or searching a detainee. In such cases, exercise only the amount of force necessary to gain the compliance of the detainee. Apply all uses of force in accordance with JTF-GTMO ROE/RUF, dated 30 Nov 02. Immediately report all uses of force to the DOC and/or JDOG S3. Report to CJDOG any excessive use of force as expeditiously as feasible. All personnel will carry JTF-GTMO RUE/RUF card at all times.

(5) Alertness. Personnel will be alert to detect and prevent a detainee from escaping or harming himself or others.

(6) Contraband. Contraband is any item, article, or substance not authorized to be in the possession of personnel while within the confines of Camp Delta or other JTF-GTMO detention facilities. Personnel will not bring or permit others to bring any item(s) for detainees into the facility. Do not give or make accessible contraband to detainees. Anything not issued to detainees or authorized for their use is contraband. A partial list of contraband follows:

(a) Guns or firearms of any type

(b) Explosives or munitions

such medications should immediately notify their chain of command and fitness for shift determinations will be made on a case-by-case basis. The consumption of alcoholic beverages and/or other mind-altering substances is sufficient cause to effect relief from duty and disciplinary action.

b. All violations of the Standards of Conduct will be promptly reported to the chain of command.

1-8. General Protection Policy

a. Give all persons detained at Camp Delta and other JTF-GTMO detention facilities humanitarian care and treatment within the spirit of the Geneva Conventions.

b. The inhumane treatment of detainees is prohibited and is never justified. Further, any one who treats a detainee inhumanely, or fails to report such an incident, is subject to punishment under the Uniform Code of Military Justice and/or other applicable laws and statutes.

c. Respect all detainees as human beings and protect them against all acts of violence.

Chapter 28

Public Affairs

28-1. Operations

a. When possible and properly requested through JTF-GTMO Public Affairs Office (PAO), the Facility Commander will grant access within the facility to representatives of the media.

b. Press/media will not photograph, videotape, or interview any detainee. Rights to privacy will be preserved at all times.

c. Safety/security and order must be obtained at all times. The Facility Commander or senior cadre member in the facility may terminate any media visit if it is determined to jeopardize custody and control.

d. PAO will accompany all media/press tours, as well as a JTF-GTMO and/or JDOG command designated personnel.

e. No detainee information, records, or files will be released. The Facility Commander must authorize any release to the media.

f. All press releases for both emergency and non-emergency situations will be done through JTF-GTMO PAO. News will not be released from the facility to any media agency. The JTF-GTMO PAO will release all information in accordance with their policies and regulations.

g. The Facility Commander and Camp Superintendent are the only individuals authorized to speak with media on behalf of the facility, unless designated by JTF-GTMO and/or CJDOG.

28-2. Themes for Global War On Terrorism (GWOT)

a. We are making progress in the GWOT through a concerted effort with our coalition partners.

b. The U.S. will use all elements of national power and international influence to defeat global terrorism.

c. USSOUTHCOM remains committed to working with our partner nations to support democracy, military professionalism, and the observance of human rights.

d. The U.S. respects all religions. Our enemies are terrorists and the states and organizations that support them.

e. The U.S. will take all necessary steps to ensure that operations target global terrorist networks while protecting innocent lives.

28-3. Detainee International Public Information Themes

a. Detaining these people in Guantanamo Bay supports the smooth transition to a stable and secure environment in Afghanistan.

b. Guantanamo Bay affords a safe facility to secure and provide appropriate care for detainees.

c. All detainees will be treated humanely and consistent with the principles of the Geneva Conventions.

d. These detainees are the most dangerous of the Al-Qaida and Taliban. They continue to pose a threat and must be under tight control.

e. Guantanamo Bay and the detention facilities are secure and well defended.

CHART REFERENCE 12

U.S. Department of Justice
Office of the Inspector General

A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq

Oversight and Review Division
Office of the Inspector General
May 2008

UNCLASSIFIED

According to Brandon, Wyatt stated that stress positions were a commonly used technique at GTMO. Stephenson and the OSC both told the OIG that they understand that this was an approved technique for the military. However, military documents indicate that stress positions were not approved at that time. Although "stress positions (like standing) for a maximum of four hours" was on the list of approved counter resistance interrogation techniques permitted at GTMO under the memorandum approved by Secretary Rumsfeld on December 2, 2002, that list was rescinded on January 15, 2003.[209] On April 16, 2003, Secretary Rumsfeld approved a new list of permissible techniques for use at GTMO that did not include "stress positions."

This incident again illustrates the inadequacy of the guidance provided to FBI agents regarding what techniques were approved for use by the military and how the agents were to conduct themselves in joint interrogations. The FBI agents thought that this was an approved military technique; they apparently were not aware that the Secretary of Defense had rescinded his approval of stress positions 9 months before the Al Qarani incident took place. According to the *Church Report*, short chaining was a form of stress position, a technique that was removed from the pre-approved list in January 2003. Yet, the military at GTMO apparently did not consider short-shackling to be a prohibited "stress position" at least until May 2004, when the military commander at GTMO prohibited this practice. *Church Report* at 168.

Although the FBI's May 2004 Detainee Policy had not yet been issued, the FBI agents involved in this matter told us they knew they should not engage in techniques that would be prohibited in the United States. However, it was not clear what an agent should do if another agency's interrogator utilized such a technique without the prior agreement of the FBI agent. Moreover, there was no evidence that Brandon knew in advance that Wyatt would put Al Qarani in a stress position. Under the circumstances, we did not find that Brandon violated any FBI policy in connection with Wyatt's conduct. However, we are troubled by the fact that Brandon and Stephenson did not recognize more quickly that Wyatt's conduct was inappropriate for an interview in which the FBI was participating. Brandon and Stephenson should have acted more quickly to object to the conduct and attempt to stop it.

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[209] Moreover, we believe there is very significant doubt that short chaining a detainee to the floor would have been considered to be "like standing" within the meaning of the December 2 memorandum.

CHART REFERENCE 13

Behavioral Science Consultation Team **28 March 2005**
Joint Intelligence Group, Joint Task Force-GTMO
Standard Operating Procedures (U)

1. (U) Purpose. The purpose of this document is to establish Standard Operating Procedures (SOP) for the daily operation and administration of the Behavioral Science Consultation Team (BSCT), Joint Interrogation Group (JIG), Joint Task Force-Guantanamo Bay, Cuba (JTF-GTMO).

2. (U) Scope. This SOP applies to all personnel assigned to the BSCT and supersedes the previous BSCT SOP.

3. (U) BSCT Personnel.

a. (U) BSCT Chief (BSCT1). Clinical Psychologist, USA, 73B. Chief, responsible for all issues relating to BSCT operations. Develops detailed BSCT policies and operating procedures. Reports to the Director, JIG; coordinates with the Commander, Joint Detention Operations Group (JDOG); and, as directed, provides special staff officer functions to the Commander, JTF-GTMO. In the event that the USAF 42P3 is senior in rank to the USA 73B, JIG Director will designate team chief based on experience and training in interrogation support.

b. (U) Assistant BSCT Chief (BSCT2). Clinical Psychologist, USAF, 42P3. Assumes duties of BSCT1 in his/ her absence. Provides consultation and interrogation support to the Interrogation Control Element (ICE). Works with JDOG-S2 (Counter-Intelligence) to identify trends in detainee behavior [redacted] may support Deployment Cycle Support program by providing training on Posttraumatic Stress and Anger Management for personnel departing JTF-GTMO.

L(2)

c. (U) BSCT NCOIC (BSCT3). Mental Health Specialist, USA, 91X. Provides consultation and interrogation support to the ICE. Assesses camp climate and provides feedback to BSCT1 on issues and trends. May provide training in behavioral principles/ management to ICE and JDOG personnel; may support Deployment Cycle Support program by providing training on Posttraumatic Stress and Anger Management for personnel departing JTF-GTMO.

4. (U) Mission. Provide psychological consultation in order to support safe, legal, ethical, and effective detention and interrogation operations at JTF-GTMO.

5. (U) Objectives.

a. (U) Provide psychological expertise to assess the individual detainee and his environment; provide recommendations to enhance the effectiveness of interrogation operations.

b. (U) Use psychological expertise to provide monitoring, consultation, and feedback regarding the entire detainee environment in order to assist the command in ensuring humane treatment of detainees, the prevention of abuse, and the safety of U.S. personnel.

CLASSIFIED BY: JTF-GTMO Classification Guide dated 10 June 2004
REASON: 1.4(C) or Intelligence Activity, Source, or Methods
DECL ON: 28 March 2030

6. (U) Mission Essential Tasks.

a. (U) Provides consultation to interrogation staff in support of the intelligence collection mission.

(1) (S)

(b)(1) [redacted]

(2) (S)

(b)(1) [redacted]

(a) (U//FOUO)

(b)(2) [redacted]

(b) (S)

(b)(1) [redacted]

(3) (S)

(b)(1) [redacted]

b. (U) Monitors interrogations and other staff-detainee interactions; provides consultation on policies and strategies for ensuring the safety of detainees and JTF-GTMO personnel; provides direct feedback to command on issues involving psychological risk factors affecting detainee operations.

(1) (U) Provide psychological oversight to ensure that staff-detainee interactions are safe for both detainees and U.S. personnel. Immediately call attention to and appropriately report any interactions that are considered unsafe, unethical, illegal or in violation of applicable policies and procedures.

(2) (U) Provide feedback to command in verbal or written form to JIG Director, JDOG Commander, or JTF Commander, as appropriate, regarding potential risks to detainees and U.S. personnel at JTF-GTMO.

(3) (U//FOUO)

(b)(2) [redacted]

c. (U) Monitors behavioral trends in the detainee population and integrates findings into consultation in support of interrogation and detention operations.

(b)(1)(1) (S) [redacted]

(b)(1) (2) (S) [redacted]

(b)(1)(3) (S) [redacted]

d. (U) Provides selected JIG and JDOG personnel with training on behavioral, psychological, and cultural issues pertaining to the detainee population.

(b)(2)(1) (U//FOUO) [redacted]

(b)(2)(2) (U//FOUO) [redacted]

(3) (U//FOUO) Provides training to facilitate the maintenance of a stable and secure detention environment, such as appropriate ways to respond to detainee misbehavior, recognition and reporting of behavior patterns, minimizing transfer of information from guard staff to detainees, and strategies for increasing pro-American sentiment.

(4) (U) Provides training to increase awareness of religious and cultural issues unique to the detainee population, such as proper handling of Qur'ans, ways to demonstrate respect for religious practices, and special practices during religious holidays (e.g., Ramadan).

e. (U) Advises JIG and JDOG on use of materials for the Detainee Library and sits on the Library Advisory Board.

(1) (U) Participates on Library Advisory Board to review library materials and advise JIG and JDOG on future acquisitions.

(2) (U) As a member of the Board, reviews library operations and forwards recommendations to the JIG Director and JDOG commander

f. (S) [redacted] (b)(1)

(1) (S) [redacted] (b)(1)

(2) (S) [redacted]

(b)(1)

(3) (S) [redacted]

g. (U) Assists in the development of detention facility behavior management plans.

(1) (U) Consults with JDOG S-3, JDOG S-2, Medical, Behavioral Health, and ICE personnel to develop camp-wide strategies for improving behavioral levels of detainees.

(a) (U) Provides input into the development of strategies for reducing unwanted behavior, such as re-location or movement of detainees, disciplinary actions, structural or procedural changes within the camp.

(b) (U) Provides input into the development of strategies for increasing positive behavior, such as implementation of incentive programs, reinforcement programs for positive behavior, and increasing access to recreational and social activities.

b(1)

(2) (S) [redacted]

h. (U) Consults with JTF Commander on detainee issues, staff issues, and camp dynamics, and provides recommendations on ways to improve camp operations. BSCT personnel have full and direct access to JTF Commander to consult on all aspects of JTF mission.

i. (U) Other duties as assigned.

7. (U) Mental Health and Medical Services.

a. (U) BSCT personnel shall not conduct mental health evaluations or provide mental health treatment to detainees or JTF-GTMO personnel. BSCT personnel will take all reasonable steps to ensure that they are not perceived as healthcare providers for detainees or JTF-GTMO personnel.

(1) (U) The Joint Medical Group (JMG) provides all medical treatment, including mental health evaluation and treatment, for detainees and JTF-GTMO personnel. Services for detainees are provided through the Detention Hospital, Detention Clinic, and Detainee Behavioral Health Service. Services for JTF-GTMO personnel are provided through the Combat Stress Control, Joint Aid Station, and U.S. Naval Hospital, GTMO.

(2) (U) The JMG is responsible for advising JIG personnel (i.e., BSCT and ICE Operations) if there are any known physical, psychological, or medical conditions; limitations to functioning; or restrictions to usual activities that one is required to consider in order to ensure the safety of the detainee and U.S. personnel, e.g., diabetes, heart condition, special diet, psychological instability, contagious conditions.

b. (U) BSCT personnel will function as Medical Liaison Officers for the intelligence unit based on procedures established in conjunction with Joint Medical Group. When concerns about health status or medical condition of detainees are raised through observation by BSCT personnel, inquiries

raised by interrogators or other reporting mechanisms, BSCT will convey these concerns to appropriate medical personnel for evaluation, treatment, and disposition.

(1) (U) Neither BSCT personnel nor interrogation teams have access to medical records of detainees. The BSCT acts as medical liaison between interrogation teams and medical personnel in order to maintain the separation between medical care and intelligence-collection.

(2) (U) The BSCT will direct requests for information and issues of medical concerns brought up by interrogation teams to the JTF-GTMO-JMG organizational box. From there it will be routed to the appropriate medical/ dental personnel for response to BSCT personnel who will forward to originator of the inquiry.

(3) (U) The kind of information shared will generally fall into two categories. The first is that of physical or medical conditions, or functional limitations, that one is required to consider in order to ensure the safety of the detainee and U.S. personnel, e.g., diabetes, heart condition, special diet, or contagious conditions. The other category of information shared is whether medical personnel were aware of the condition, if it had been evaluated and treated, or if an appointment is pending to address the concern.

(4) (U) The BSCT will meet on a regular basis with the Director, Joint Medical Group; Director, Medical Plans and Operations; OIC, SMO, and other staff from the Detention Hospital and Detainee Behavioral Health Service in order to discuss any issues related to policies and procedures.

8. (U) Intelligence Collection with Juveniles. JTF-GTMO does not normally detain Juvenile Enemy Combatants, however, in order to deal with this possibility, special procedures must be established. Juveniles are defined as any person below the age of 16. Gathering intelligence from juveniles will require special precautions and extra care because juveniles are often more vulnerable with less developed coping skills than adults. In order to ensure proper care for the juvenile detainee, the following procedures will be followed:

a. (U) For any person under the age of 16, a BSCT personnel will be present for the entire time of interrogation. A medical provider will evaluate the juvenile prior to and after the interrogation. The interrogation plan must be reviewed by the BSCT psychologist, ICE Regional Team Chief, ICE Chief, and the JIG Director.

b. (S) [redacted] (b)(1)

c. (S) [redacted] (b)(1)

(1) (S) [redacted] (b)(1)

(2) (U) Since many juvenile detainees have come from deprived environments, special effort will be made to ensure their protection, to provide necessary emotional support, and to provide education as available.

(3) (U) Transportation and the security of the detainees will be organized and implemented by the JDOG personnel. [redacted] (b)(2)

9. (U) Other Operational Procedures. The following procedures apply to the daily BSCT operations.

a. (U) OPSEC. All operations of the BSCT must conform to guidance set forth in JTF-GTMO General Order Number 2. Specific considerations for BSCT personnel are as follows.

(1) (U) Ensure that classified material (files, papers, photos, disks) are properly secured in the safe designated for BSCT use; at no time shall classified materials be left unattended in BSCT offices.

(2) (U) Do not discuss detainee operations or other classified information over unclassified phone lines.

(3) (U//FOUO) Sanitize uniforms by placing tape over the name when working in or visiting areas where contact with detainees is possible, including detainee blocks, interrogation buildings, and medical facilities.

(4) (U//FOUO) Use a courier bag when transporting classified or sensitive documents. Do not use courier bags for transportation of unclassified or prohibited materials.

(5) (U) Do not discuss detainee operations in areas where individuals without appropriate clearance or need to know could overhear information.

(6) (U) Do not discuss operations, current events, or personal information in the presence of detainees.

(7) (U) Ensure BSCT offices are locked at the end of the day and that the security checklist is completed. The last person leaving the building must also complete the security checklist for the building and ensure the front door is secured using the combination lock.

b. (U) Vehicle Operations. Ensure the BSCT vehicle is taken to motor pool for reassignment and routine maintenance NLT the end of each month.

c. (U) Supplies. Required office/administrative supplies can be obtained through the ICE Admin office. Other supplies and equipment can be ordered through ICE Admin office by completing the appropriate purchase order request.

10. (U) Battle Rhythm. Successful execution of day-to-day mission requirements requires flexibility, self-discipline, and ability to multi-task and prioritize in all BSCT personnel. There are often competing urgencies. Many tasks are self-directed; many demands are made with little or no notice while others are scheduled in advance. Assessments typically require a series of observations in different settings and hours of research. Many day-to-day activities are determined by response to requests for consultation and observation; often, rapid response is required. Some committee meetings and working groups follow established schedules while others are generated by the BSCT for specific purposes.

a. (U) **Ethical and legal responsibilities.** In addition to the other duties and qualifications noted in this document, it is the responsibility of all BSCT personnel to familiarize themselves with and adhere to

the UCMJ, Geneva Conventions, applicable rules of engagement, local policies, as well as professional ethics and standards of psychological practice. All BSCT personnel will be expected to:

(1) (U) Read and adhere to JTF-GTMO policy memoranda, regulations, and SOPs.

(2) (U) Immediately report any suspicions of abuse of detainees or misconduct by U.S. personnel to JIG Director who is responsible for further reporting to JTF Commander.

(3) (U) Consult with colleagues and their chain of command regarding any conflicts that may arise between professional requirements and performance of their duties.

b. **(U) Referral process for consultations.** Interrogators may request consultation to support interrogations or other requirements by contacting any member of the BSCT. This will most typically occur in person at BSCT offices, by telephone, or by email.

c. **(U) Committee Membership.** BSCT personnel participate in the following committees, working groups, and meetings.

(1) (U) Interrogation Strategy Meeting (ISM, BSCT1): weekly in the JIG conference room.

(2) (U) JIG Command and Staff Meeting (BSCT1): weekly in the JIG conference room.

(3) (U) JIG pre-ISM (BSCT1/2): weekly in the JIG conference room.

(4) (U) ICE Coordination Meeting (BSCT1/2): weekly in the ICE Conference Room.

(5) (U) JDOG Coordination Meeting (BSCT1/2): weekly in the ICE Conference Room.

(6) (U) JDOG Company Training (BSCT1/2/3): Camp America Chapel as convened by JDOG.

(7) (U) ICEbox Review Committee (BSCT1/2/3): ICE Conference Room; convened by BSCT as needed.

(8) (U) Library Advisory Board (BSCT1/2): Meetings as convened by chair.

(9) (U) Other committees/ roundtables/ working groups, as appropriate.

11. (U) Point of Contact. The point of contact for this SOP is BSCT Chief at [redacted]

Attachments:
Annex A – BSCT Assessment: Guidelines & Format (U)
Annex B – BSCT Observation Report: Guidelines & Format (U)
Annex C – BSCT Risk Assessment: Guidelines & Format (U)

CHART REFERENCE 14

OCTOBER 2002
VOL. 33, NO. 9

AMERICAN PSYCHOLOGICAL ASSOCIATION

MONITOR ON PSYCHOLOGY

GST# R127612802

A PUBLICATION OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION

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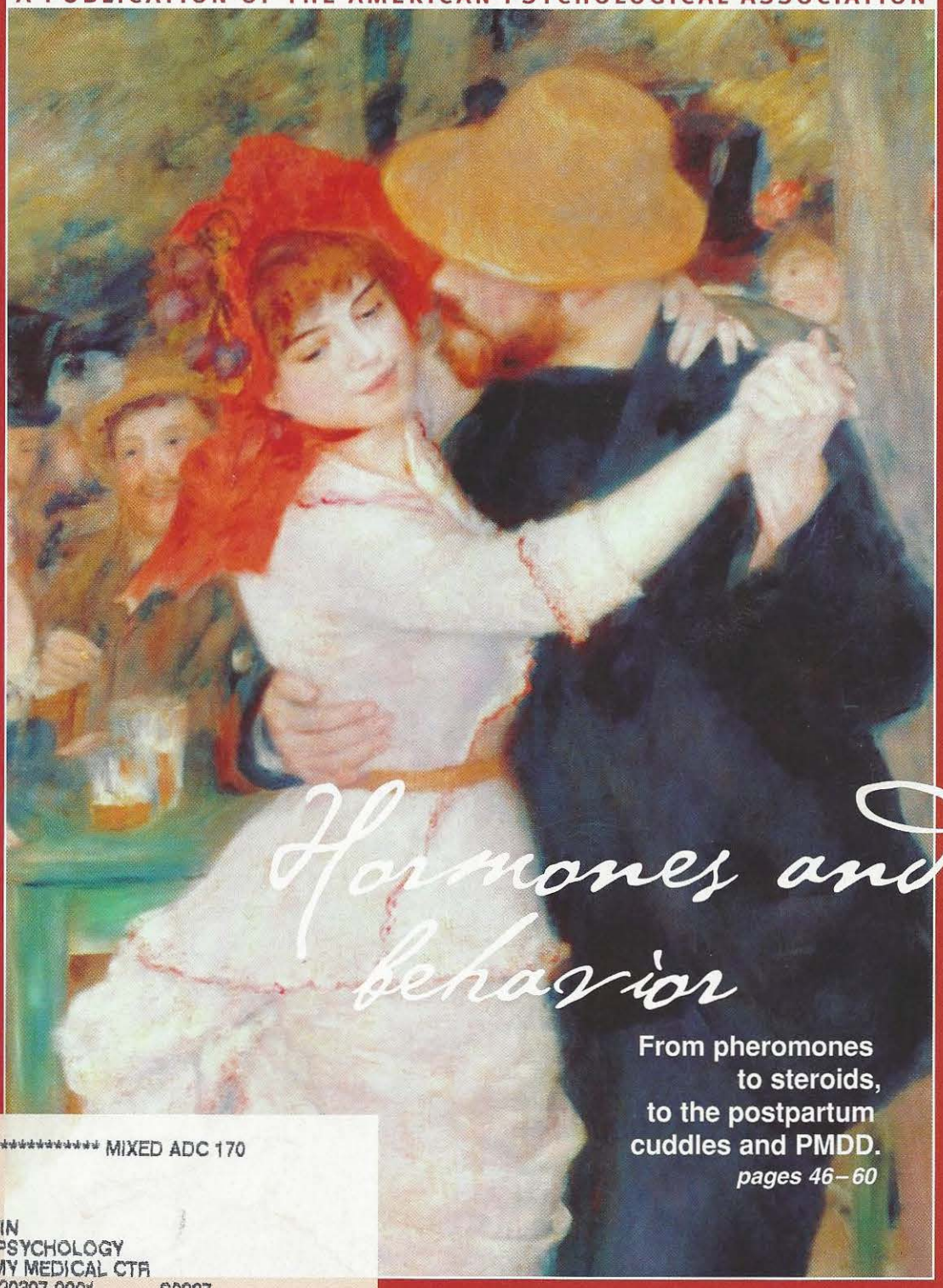

Hormones and behavior

From pheromones to steroids, to the postpartum cuddles and PMDD.
pages 46–60

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Cedric L. Alexander, PsyD, is the new deputy chief of the Rochester Police Department in Rochester, N.Y. As director of organizational development, his responsibilities include recruitment training and background investigation. Prior to his appointment, Alexander was an instructor and Postdoctoral fellow at the University of Rochester Medical Center with a specialization in police psychology, family therapy, group process and multiculturalism.

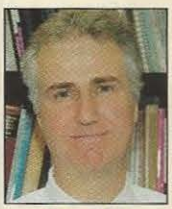
Alexander

In 1999, Alexander, a former deputy sheriff, combined his academic research and field experience and contributed to the work "Police Trauma: Psychology Aftermath of Civilian Combat," which detailed the psychological impact of police work.

APA's Div. 55 (The American Society for the Advancement of Pharmacotherapy) has established the **Patrick H. DeLeon Prize** for an outstanding student dissertation or published paper in either clinical psychology or prescription authority advocacy. The $500 prize will be awarded at the APA annual convention beginning in 2003.

The award was named after DeLeon, a former APA president and an advisor to Sen. Daniel K. Inouye (D–Hawaii).

New York State Senator Kemp Hannon presented **Thomas Demaria, PhD,** with the New York State Senate Liberty Award for Demaria's creation of a special bereavement and trauma counseling center for children who lost family members in the World Trade Center disaster and for extensive services provided to schools, community groups, religious organizations and businesses traumatized by Sept. 11.


Demaria

Founded in 2000, the liberty award is given to individuals who display exceptional heroic or humanitarian acts on the behalf of New Yorkers. Demaria is the administrative director of Behavioral Health Services at South Nassau Communities Hospital in New York. His specialties include marriage therapy, behavioral medicine, stress management and trauma counseling.

For 2002–03, **Celia B. Fisher, PhD,** will hold the position of bioethicist in residence at Yale University. Fisher is director of the Fordham University Center for Ethics Education. The center was created in 1999 to encourage scholarly, scientific and public practices guided by respect for diversity within communities and nations. Her research topics include how teen-agers and parents from different ethnic backgrounds react to racial discrimination and the ability of adults and children with cognitive vulnerability to consent to treatment. Fisher is also professor of applied developmental psychology at Fordham University.

Fisher

JUDY TAYLOR

Dr. Debra Dunivin's new rank was pinned on by Sen. Daniel Inouye (left) and her husband Russ Newman, PhD, JD, APA's executive director for practice (right).

Debra Dunivin, PhD, was promoted in July from the rank of Major to Lieutenant Colonel in the U.S. Army. The ceremony took place in the office of Sen. Daniel K. Inouye (D–Hawaii), where Dunivin worked as a Congressional Science Fellow from 1992 to 1994, prior to entering the Army when she was recruited to participate in the Psychopharmacology Demonstration Project. Dunivin is currently serving as deputy director of the department of psychology and director of training for the Clinical Psychology Residency Program at Walter Reed Army Medical Center in Washington, D.C. Other duties include a clinical practice in psychopharmacology and consultation to Walter Reed's Clinical Breast Care Project, conducting research in psycho-oncology and telehealth.

G. Frank Lawlis, PhD, a fellow of APA's Div. 12 (Society of Clinical Psychology) and Div. 38 (Health), has been named supervisory psychologist of American Mensa in July. He replaces Abbie F. Salny, EdD. Lawlis will be responsible for ensuring the integrity of American Mensa's testing program and evaluating new tests that determine admission to the organization.

Lawlis

Lawlis is a research professor at the department of rehabilitation, social